A REVIEW

Hearing Officers In State Government

00-7

June 2000

1999-2000 Joint Legislative Audit Committee Members

Senate Members: Assembly Members:

Gary R. George, Co-chairperson Judith Robson Brian Burke Peggy Rosenzweig Mary Lazich Carol Kelso, Co-chairperson Stephen Nass John Gard Robert Ziegelbauer David Cullen

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Senator Gary R. George and Representative Carol Kelso, Co-chairpersons Joint Legislative Audit Committee State Capitol Madison, Wisconsin 53702

Dear Senator George and Representative Kelso:

We have completed a review of the use of hearing officers in Wisconsin state government, as requested by the Joint Legislative Audit Committee. We estimate that in fiscal year (FY) 1998-99, the State spent an estimated \$17.3 million and employed 206.1 full-time equivalent employes—including 103.3 hearing officers—to conduct hearings and resolve contested cases related to employment, social services, corrections, discrimination, consumer protection, transportation, and licensing. Approximately 24,900 hearings were held. Two agencies—the Department of Workforce Development (DWD) and the Department of Administration's (DOA's) Division of Hearings and Appeals—account for more than 80 percent of hearing-related staff and expenditures.

Agency efforts to establish and measure performance of hearing officers have been uneven. We identified a total of 97 performance standards, most of which were established by state agencies to manage timeliness and productivity. However, only 53 of these standards were actually used to assess agency performance in holding hearings. Assessing the overall quality of hearing officer decisions is difficult. Nevertheless, one indicator of quality—the rate at which decisions are reversed on appeal—shows that most hearing officer decisions are upheld.

If the Legislature wishes to increase efficiency and reduce costs by further consolidating hearing functions, some changes to the organization of hearing officer responsibilities could be considered. However, because most hearings are already conducted by either DWD or DOA's Division of Hearings and Appeals, any cost savings that could be derived from further consolidation are likely to be limited.

We appreciate the courtesy and cooperation extended to us by the many state agencies contacted during the course of this review. Responses from DOA and DWD are appendices IV and V.

Respectfully submitted,

Janice Mueller State Auditor

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SUMMARY

In fiscal year (FY) 1998-99, the State spent an estimated \$17.3 million and employed an estimated 206.1 full-time equivalent (FTE) employes—including 103.3 FTE hearing officers—to hear approximately 24,900 contested cases. Two agencies, the Department of Workforce Development (DWD) and the Department of Administration's (DOA's) Division of Hearings and Appeals, account for more than 80 percent of hearing-related staff and expenditures.

Contested cases are agency proceedings that address disputes in which individuals or parties believe they have been adversely affected by some state regulatory action, employment decision, or other type of action. These disputes involve a broad range of issues, including:

- denial of unemployment insurance or worker's compensation benefits;
- administrative suspensions of driver licenses for operating a motor vehicle while intoxicated;
- violations of probation and parole; and
- disciplinary proceedings against practitioners in a range of professions, such as social workers, doctors, dentists, and barbers.

Questions have been raised about the work of hearing officers, including the timeliness of the hearings they conduct and the decisions they issue, the quality of their decisions, and the extent to which sufficient management oversight is exercised over their activities. Therefore, at the request of the Joint Legislative Audit Committee, we:

- identified the number of agencies and staff, including support staff, associated with hearing functions;
- analyzed costs associated with hearing functions;
- identified the types of contested cases resolved by hearing officers and how responsibility for resolving these cases is distributed among state agencies;

- analyzed caseload statistics and determined the extent to which agencies use measurable performance standards to assess and improve hearing operations; and
- reviewed options to reduce costs and improve coordination and oversight of the State's hearing officers.

The number of staff and the amount of expenditures dedicated to resolving contested cases vary substantially among the 14 state agencies that recorded hearing officer expenditures. For example, the estimated cost to resolve a contested case in FY 1998-99 ranged from an average of \$54 in the Department of Transportation's Bureau of Field Services (which resolves cases related to operating a motor vehicle while intoxicated) to an average of \$2,990 in the Department of Regulation and Licensing (which resolves cases related to disciplinary proceedings, suspensions, injunctions, and the review of denied applications for professional licenses).

Average case costs vary for a number of reasons. First, not all cases are of the same complexity. For example, some social services cases, such as those dealing with eligibility appeals for Medical Assistance, food stamps, and other benefits, are typically straightforward and present a limited number of legal issues. However, other social services cases, such as those related to recoupment of Medical Assistance payments from health care providers, are more complex and can require additional time and effort.

Second, the cost of some cases is affected by state laws that attempt to limit hearing costs. For example, administrative code restricts cases involving the suspension of a driver license for operating a motor vehicle while intoxicated to a narrow set of reviewable issues. This restriction typically allows these hearings to be completed in 30 minutes or less.

Finally, case costs depend largely upon the amount of time hearing officers devote to them; we estimate that hearing officer salaries and fringe benefit costs account for 52.8 percent of the total cost of resolving contested cases. In FY 1998-99, salaries for hearing officers averaged \$33.69 per hour, or \$70,345 annually.

Agency efforts to establish measurable performance standards and evaluate hearing officer performance have been uneven. Most hearing officers are subject to performance standards established under state or federal law, or by the agency in which they are employed, but not all agencies use these standards to ensure either the timeliness or the quality of hearing officer decisions.

We identified 97 standards that apply to various aspects of the contested case hearing process. Of these, 65 apply to activities performed by the hearing officer. The remaining 33 standards apply to activities that are the responsibility of support or investigative staff or apply to the entire process, which may include time that is not controlled by hearing officers. Only one measurable performance standard we identified was related to the quality of the decisions issued by hearing officers; all others related to timeliness and productivity.

Agencies maintained statistics for 53 of the 97 standards we identified, and they met 38 of those standards in FY 1998-99. Because the development of standards and the collection of performance information are important components of effective operation in any state agency or program, we include a recommendation that all state agencies responsible for conducting contested case hearings develop performance standards for their hearing officers and measure compliance annually.

Although concerns have been raised about the quality of some hearing officers' decisions, and despite the lack of measurable performance standards related to quality, we found that relatively few decisions issued by hearing officers were reversed by higher legal authorities such as the Labor and Industry Review Commission or the circuit courts. The highest reversal rate was for DWD's Worker's Compensation Division: between 1995 and 1998, 11.9 percent of its appealed decisions were reversed, at least in part, by the Labor and Industry Review Commission. However, when reversal rates are measured as a percentage of all decisions issued by DWD hearing officers, rather than as a percentage of appeals, DWD's Worker's Compensation Division, Equal Rights Division, and Division of Unemployment Insurance have comparable reversal rates.

We found little support for most concerns related to supervision of hearing officers. Most state agencies have demonstrated a commitment to assessing individual hearing officer performance. However, in 1999, annual evaluations were not conducted for hearing officers in DWD's Worker's Compensation Division, as required by state law. DOA completed annual evaluations for its hearing officers during the period we reviewed. DWD and DOA's Division of Hearings and Appeals employ 79.3 percent of all hearing officers and conduct 75.7 percent of contested case hearings.

Since 1978, responsibility for a number of different types of case hearings has been consolidated within DOA. Some additional consolidation within either DOA or DWD is possible, but it is unlikely to result in significant financial benefits. The types of hearings that appear to be most suitable for consolidation within DOA or DWD are those that:

- are limited in number and therefore most likely to result in economies of scale if consolidated;
- have no special need to be conducted by the agency responsible for program administration;
- do not already ensure sufficient independence through the possibility of review by an objective board, commission, or other oversight entity; and
- would appear to fit in well with the types of cases currently conducted by either DOA or DWD.

INTRODUCTION

In FY 1998-99, the State spent \$17.3 million to resolve contested cases.

In fiscal year (FY) 1998-99, the State spent an estimated \$17.3 million and employed an estimated 206.1 full-time equivalent (FTE) employes-including 103.3 FTE hearing officers—to conduct approximately 24,900 hearings and resolve an estimated 48,700 contested cases related to employment, social services, corrections, discrimination, consumer protection, transportation, licensing, and other issues. Hearing officers, also known as hearing examiners or administrative law judges, are typically attorneys who issue rulings on complaints brought by individuals or parties alleging that they have been adversely affected by some state regulatory action, employment decision, or other type of action. Hearing officers preside over cases that cover a wide range of issues; however, complaints are most typically related to denial of unemployment insurance or worker's compensation benefits, violations of probation and parole, denial of medical assistance benefits, denial of food stamp benefits, administrative suspensions of driver licenses for operating a motor vehicle while intoxicated, claims against uninsured motorists, and employment and housing discrimination complaints.

Most hearing officers work in DWD and DOA.

State hearing officers work in 14 state agencies, but the majority are located in the Department of Workforce Development (DWD) and the Department of Administration's (DOA's) Division of Hearings and Appeals. Although hearing procedures differ according to the requirements of statutes, administrative code, or agency policy, contested cases typically involve a request for a hearing, followed by resolution either through a decision issued by the hearing officer after completion of a hearing or through an agreed-upon settlement. An overview of contested case procedures is presented in Appendix I.

Recently, a number of questions have been raised about the work of hearing officers, including the timeliness of the hearings they conduct and the decisions they issue, the quality of their decisions, and the extent to which sufficient management oversight is exercised over their activities. Therefore, at the direction of the Joint Legislative Audit Committee, we conducted a review of the State's use of hearing officers that:

- identifies the number of agencies and staff, including support staff, associated with hearing functions;
- analyzes costs associated with hearing functions;

- identifies the types of contested cases resolved by hearing officers and determines how responsibilities for resolving cases are distributed among state agencies;
- analyzes caseload statistics and determines the extent to which agencies use measurable performance standards to assess and improve hearing officer operations; and
- reviews options to reduce costs and improve coordination and oversight of hearing functions.

In completing our review, we interviewed agency officials. We also reviewed expenditures and case information for FY 1998-99, the most recent year for which complete financial information was available during the course of our audit. We focused our review on DWD and DOA, which together account for more than 80 percent of all hearing-related expenditures. We reviewed standards for timeliness and quality established by state and federal law, as well as those established internally by state agencies. In addition, we reviewed available comparative information on the centralized hearing functions of other states.

It should be noted that we did not collect information on agency staff who conduct public hearings for the purpose of receiving input from the public on proposed administrative rule or policy changes. For example, the Department of Natural Resources employs staff who hold public hearings to take testimony regarding changes to hunting and fishing regulations. Also, we excluded hearings held by the Public Service Commission, because their decisions are not similar to decisions issued by hearing officers in other state agencies. Finally, we excluded two agencies—the Ethics Board and the Elections Board—that have the authority to resolve contested cases but held no hearings during the period of our review.

Designation of Hearing Authority

Hearing authority commonly resides in the agencies that administer programs. For some types of cases, it is most efficient or effective for the hearing officer to be located within the department or agency administering the issue being contested. Other types of cases, however, are heard by hearing officers located in another state agency. In FY 1998-99, 70.4 percent of the 48,700 contested cases were conducted within agencies that were responsible for the underlying decision, action, or order; 29.6 percent were conducted by agencies that were not. Several factors need to be considered in determining whether hearings should be

conducted internally or externally, including the need for expertise, perceived independence, and cost-effectiveness.

The most commonly contested cases involve unemployment insurance and worker's compensation decisions.

Hearings of the two most commonly contested cases, those concerning appeals of unemployment insurance and worker's compensation decisions, are conducted within DWD, which administers these programs. DWD officials believe their high case volume allows hearing officers to develop specialized expertise, and parties negatively affected by DWD's hearing decisions may appeal to the Labor and Industry Review Commission at no cost. Nevertheless, the perception of independence is one of the main reasons a large number of hearings such as probation and parole revocation hearings are assigned to agencies other than those responsible for administering the program or policy being contested.

Another reason for an external agency conducting hearings is the economies of scale that result when a variety of low-volume case types from several agencies are combined at one agency. Both salary and administrative costs can be reduced through centralization that limits the number of hearing officers needed to conduct hearings. In Wisconsin, most hearings conducted by an external agency are performed by DOA's Division of Hearings and Appeals, which employs 24.9 FTE hearing officers to hear cases for eight state agencies.

PROGRAM FUNDING

Expenditures for hearing-related functions totaled \$17.3 million in FY 1998-99. We found that most expenditures were for employe salaries and fringe benefits. Although 14 agencies employ hearing officers to resolve contested cases, the number of staff and amount of expenditures dedicated to resolving contested cases vary substantially.

Source of Funding

DWD and DOA accounted for 82.7 percent of all hearing officer expenditures. Total state funding for contested cases was evenly divided among general purpose revenue, federal revenue, and program revenue. As shown in Table 1, 10 of the 14 agencies relied entirely on one funding source to support their hearing-related functions. Only three agencies—DWD, DOA, and the Department of Revenue—relied on more than one funding source for a significant proportion of their expenditures. DWD and DOA accounted for 82.7 percent of the total expenditures for hearing officer functions in FY 1998-99. In contrast, the smallest nine agencies accounted for only 5.3 percent of total expenditures.

Table 1 also shows that agencies relied more heavily on program revenue than any other single source of funding. In FY 1998-99, program revenue constituted almost \$6.3 million, or 36.2 percent, of agency spending on hearing functions.

Three Divisions within DWD—the divisions of Unemployment Insurance, Vocational Rehabilitation, and Equal Rights—spent federal funds for contested case hearings. In FY 1998-1999, \$5.5 million, or 51.4 percent, of the almost \$10.7 million spent by the Department on contested case hearings was federally funded.

Table 1 **Hearing Officer Expenditures**FY 1998-99

<u>Agency</u>	Program <u>Revenue</u>	Federal <u>Revenue</u>	General Purpose <u>Revenue</u>	Segregated Revenue	<u>Total</u>
DWD	\$4,205,300	\$5,483,400	\$ 989,000	\$ 0	\$10,677,700
DOA's Division of Hearings and Appeals	1,602,800	0	2,021,800	0	3,624,600
Employment Relations Commission	38,500	0	1,070,200	0	1,108,700
Tax Appeals Commission	0	0	510,000	0	510,000
Department of Transportation	0	0	464,900	0	464,900
Personnel Commission	0	0	299,100	0	299,100
Department of Regulation and Licensing	188,400	0	0	0	188,400
Office of the Commissioner of Railroads	112,800	0	0	0	112,800
Department of Employe Trust Funds	0	0	0	82,100	82,100
Office of the Commissioner of Insurance	81,100	0	0	0	81,100
Department of Agriculture, Trade and					
Consumer Protection	0	0	78,200	0	78,200
Department of Revenue	17,200	0	13,000	0	30,200
Department of Veterans Affairs	0	0	0	22,100	22,100
Department of Financial Institutions	14,900	0	0	0	14,900
Total	\$6,261,000	\$5,483,400	\$5,446,200	\$104,200	\$17,294,800

As noted, the majority of expenditures related to contested case hearings were for employe salaries and fringe benefits. As shown in Table 2, \$9.1 million could be categorized as hearing officer salary and fringe benefits, and \$3.3 million as salary and fringe benefits for support staff, including administrative support and staff who oversee the activities of contract hearing officers employed by the Department of Employe Trust Funds and DWD's Division of Vocational Rehabilitation.

Administrative overhead, which includes the salaries and fringe benefits for agency managers, postage, and telecommunications, was the third-largest category of expenditures, representing \$2.4 million, or 13.7 percent, of total costs.

Table 2 **Hearing Officer Expenditures by Cost Category**FY 1998-99

Expenditure Category	Expenditures	Percentage of Total <u>Expenditures</u>
Hearing Officer Salary and Fringe Benefits	\$ 9,141,200	52.8%
Support Staff Salary and Fringe Benefits*	3,322,000	19.2
Administrative Overhead	2,370,900	13.7
Other**	1,058,300	6.1
Computer Expenditures	651,600	3.8
Travel	428,100	2.5
Supplies and Services	322,700	1.9
Total	\$17,294,800	100.0%

^{*} Excludes investigative staff.

In FY 1998-99, 102.8 FTE administrative and other staff supported the State's hearing officers.

As shown in Table 3, the number of administrative and support staff associated with contested case hearings nearly equaled the number of hearing officers. Administrative and support staff, including supervisory and clerical staff, represented nearly half of all staff assigned to hearing functions.

^{**} Includes rent, building improvements and maintenance, and office equipment rental and purchases.

Table 3

Full-time Equivalent Positions Associated with Resolving Contested Cases
FY 1998-99

		Number of		
	Number of	Administrative		
	Hearing	and	All Hearing	Percentage of
Agency	<u>Officers</u>	Support Staff	<u>Positions</u>	All Positions
DWD*	57.0	61.2	118.2	57.4%
		25.9	50.8	24.6
DOA's Division of Hearings and Appeals	24.9			· -
Employment Relations Commission	8.6	3.1	11.7	5.7
Department of Transportation	3.6	6.0	9.6	4.7
Tax Appeals Commission	2.8	2.4	5.2	2.5
Personnel Commission	2.4	1.0	3.4	1.6
Department of Regulation and Licensing	1.4	0.9	2.3	1.1
Office of the Commissioner of Railroads	0.8	0.4	1.2	0.6
Department of Revenue	0.6	0.3	0.9	0.4
Department of Employe Trust Funds*	0.0	0.8	0.8	0.4
Office of the Commissioner of Insurance	0.5	0.3	0.8	0.4
Department of Agriculture, Trade				
and Consumer Protection	0.5	0.2	0.7	0.3
Department of Veterans Affairs	0.1	0.3	0.4	0.2
Department of Financial Institutions	0.1	0.0	0.1	0.1
Total	103.3	102.8	206.1	100.0%

^{*} Excludes outside hearing officers working under contract.

Hearing Categories

Employment cases accounted for 62.1 percent of hearingrelated expenditures. We also categorized expenditures for contested case hearings based on the type of dispute brought before a hearing officer. As shown in Table 4, employment cases represented \$10.7 million, or 62.1 percent, of total expenditures. Employment cases account for more than six times the expenditures represented by social services cases, which were the second-largest category. Employment cases constituted a relatively high proportion of all cases because state and federal law provide opportunities for administrative review of a number of decisions related to hiring, suspension, dismissal, unemployment benefits, and worker's compensation for both public and private-sector employes.

Table 4

Expenditures by Case Category
FY 1998-99

Category	Total Expenditures	Percentage of Total
Employment	\$10,732,800	62.1%
Social Services	1,679,700	9.7
Corrections	1,510,400	8.7
Civil Rights and Discrimination	1,456,900	8.4
Transportation	710,300	4.1
Tax	540,200	3.1
Licensing	284,400	1.6
Natural Resources	221,000	1.3
Agriculture and Consumer Protection	78,200	0.5
Education	72,100	0.4
Other	8,800	0.1
Total	\$17,294,800	100.0%

Three of the four largest categories—employment, social services, and civil rights and discrimination—include a number of case types, while the corrections category has two general types.

- Employment excludes employment discrimination
 cases but includes cases related to appeals of benefit
 determinations for unemployment insurance,
 worker's compensation, and veterans benefits;
 benefits paid to participants in the Wisconsin
 Retirement System; civil service system appeals;
 grievance arbitration; and petitions related to labor
 union elections and the status of collective
 bargaining agreements.
- Social services includes cases related to nursing homes, Medical Assistance, Wisconsin Works (also known as W-2), energy assistance, food stamps, the tax intercept for child support, and other issues related to programs administered by DWD and the Department of Health and Family Services.
- Corrections includes cases related to revocation of adult probation and parole and to violations of the terms of juvenile aftercare supervision, a supervision program for juveniles who have been released from state juvenile correctional institutions.

- Civil rights and discrimination includes cases related to employment, housing, public accommodation, post-secondary education discrimination, Family and Medical Leave Act violations, and whistleblower complaint and retaliation cases.
- *Transportation* includes cases related to driver license suspensions for operating a motor vehicle while intoxicated, uninsured motorists, railroad crossings, drainage issues, and automobile dealer bonds.
- *Tax* includes income tax cases, manufacturing assessments, real estate transfer fees, and other tax cases.
- Licensing includes cases related to the denial, suspension, and revocation of licenses and credentials for a broad range of professions and industries.
- Natural resources includes cases related to dam removal, permits for boat docks and other structures in public waters, waste disposal facilities, and mining.
- Agriculture and consumer protection includes cases related to food safety, trade, consumer protection, agricultural resource management, and animal health.
- *Education* includes cases related to the development of Individualized Education Plans for children with special education needs.
- *Other* includes cases that could not easily be grouped into a larger category, such as those related to crime victim compensation.

Cost per Case

Costs to resolve contested cases vary widely.

The average costs to resolve cases vary significantly by agency, as shown in Table 5. In FY 1998-99, the estimated cost to resolve a contested case ranged from \$54 in the Department of Transportation's Bureau of Field Services (which resolves cases related to operating a motor vehicle while intoxicated) to \$2,990 in the Department of

Regulation and Licensing (which resolves cases related to disciplinary proceedings, suspensions, injunctions, and the review of denied applications for professional licenses).

Table 5

Estimated Average Cost to Resolve Contested Cases
FY 1998-99

Agency	Number of Cases <u>Resolved</u>	Total Expenditures	Average Cost per <u>Case</u>
Department of Agriculture, Trade and			
Consumer Protection	124	\$ 78,200	\$ 631
Department of Employe Trust Funds	177	82,100	464
Department of Financial Institutions	5	14,900	2,980
Department of Regulation and Licensing	63	188,400	2,990
Department of Revenue	87	30,200	347
Department of Transportation			
Bureau of Field Services	4,480	241,400	54
Bureau of Driver Services	1,052	223,500	212
Department of Veterans Affairs	71	22,100	311
DWD			
Equal Rights Division	1,096	1,320,100	1,204
Division of Unemployment Insurance	18,871	5,171,100	274
Worker's Compensation Division	9,178	4,160,500	453
Division of Vocational Rehabilitation	11	26,000	2,364
DOA's Division of Hearings and Appeals			
Corrections Unit	6,157	1,510,400	245
General Government Unit	450	469,900	1,044
Work and Family Services Unit	5,150	1,644,300	319
Employment Relations Commission	703	1,108,700	1,577
Personnel Commission	248	299,100	1,206
Tax Appeals Commission	615	510,000	829
Office of the Commissioner of Insurance	49	81,100	1,655
Office of the Commissioner of Railroads	49	112,800	2,302

Case costs vary for a number of reasons. First, not all cases are of the same complexity. For example, some social services cases resolved by DOA, such as those dealing with eligibility for Medical Assistance, food stamps, and other benefits, are usually straightforward and present a limited number of legal issues. However, other social services cases,

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such as those related to recoupment of Medical Assistance payments to health care providers, are more complex and require additional resources.

Additionally, the cost of some cases is affected by agency or statutory limitations on the amount of effort to be made. For example, the Department of Transportation has an internal policy that requires cases involving administrative suspensions of driver licenses for operating a motor vehicle while intoxicated to be completed in 45 minutes or less, including the presentation of evidence and issuance of a decision.

Hearing Officer Salaries

In FY 1998-99, hearing officer salaries averaged \$33.69 per hour, or \$70,345 annually.

Most hearing officers are attorneys who are classified state employes. The Wisconsin State Attorneys Association represents them for collective bargaining purposes. Approximately 29 of the 103.3 FTE hearing officers we identified have other responsibilities that may affect their salaries. For example, staff who function as hearing officers at the Department of Regulation and Licensing also serve as legal counsel to various licensing boards and spend only a portion of their time resolving contested cases. As shown in Table 6, 74 full-time hearing officers who function exclusively in that capacity received an average hourly salary of \$33.69, or \$70,345 annually, in FY 1998-99.

All represented state attorneys have been in state service an average of 15.1 years. The average tenure of hearing officers is, on average, 1.1 years less than that of all represented state attorneys. With slightly less seniority than other represented state attorneys, hearing officers have had fewer opportunities to receive pay increases.

Table 6 **Average Hourly Wage and Seniority of Hearing Officers***FY 1998-99

	Number of Staff	Average <u>Hourly Pay</u>	Average Annual <u>Salary</u>	Average Years of Seniority
Top Quartile	18	\$40.12	\$83,770	23.8
2nd Quartile	19	36.36	75,920	14.8
3rd Quartile	19	32.15	67,129	11.2
Bottom Quartile	<u>18</u>	26.07	54,434	6.4
Total	74	\$33.69	\$70,345	14.0
All Represented State Attorneys	296	\$35.86	\$74,876	15.1

^{*} Excludes non-represented hearing officers, such as commissioners and supervisory or management staff who occasionally conduct hearings. Also excludes the salaries of hearing officers who have additional responsibilities unrelated to hearings.

Wisconsin's hearing officer salaries appear to be within the range reported by other states employing hearing officers. A survey of 17 other states conducted by DOA in preparation for a conference held in Madison in 1999 showed that agencies in those states reported hearing officer salaries ranging from \$16.50 to \$40.95 per hour.

EVALUATING TIMELINESS AND QUALITY

Agency efforts to monitor hearing officer performance are uneven. While most agencies are subject to performance standards established under state or federal law, or have established standards for their own proceedings, not all agencies use measurable performance standards to ensure either the timeliness or the quality of hearing officer decisions. In addition, we found that even when standards were in place, several agencies did not measure or use them routinely to ensure timeliness and quality. The two agencies with the most hearing officers and the largest number of cases, DWD and DOA, both had standards in place, although not all were measured.

Developing Performance Standards

Measurable standards are important to ensure the timeliness and quality of hearing officer performance. Timely resolution of cases is especially important to those requesting a review of an agency's decision related to hiring, promotion, licensure, or benefit denial.

Most agencies do not maintain trend data on backlogs.

Concerns over hearing backlogs in some agencies are longstanding. However, agencies define and measure backlogs differently, making comparisons difficult. Additionally, most agencies included in our review did not maintain trend data on backlogs, which meant that we were not able to determine changes in the number of pending cases for all agencies. Reliable data were available for only 8 of the 20 units that employed hearing officers.

As shown in Table 7, between FY 1995-96 and FY 1998-99, the number of pending cases has increased in DOA's Corrections Unit; the Department of Transportation's Bureau of Driver Services, which handles uninsured motorist cases; and DWD's Equal Rights Division. In contrast, the number of pending cases has declined in five other areas. Most notable has been a 68.9 percent reduction in cases pending with the Tax Appeals Commission.

Table 7 **Change in the Number of Pending Cases**FY 1995-96 through FY 1998-99

Agency	FY 1995-96	FY 1996-97	FY 1997-98	FY 1998-99	Percentage <u>Change</u>
Corrections Unit (DOA)	373	434	529	625	67.6%
Equal Rights Division (DWD)	586	601	526	685	16.9
Bureau of Driver Services*	151	161	177	176	16.5
Personnel Commission	219	169	186	203	- 7.3
Worker's Compensation (DWD)	6,092	5,302	5,527	5,118	-16.0
Work and Family Services (DOA)	1,555	2,024	965	880	-43.4
Unemployment Insurance (DWD)	1,868	1,683	1,478	1,100	-41.1
Tax Appeals Commission	5,004	3,682	1,888	1,554	-68.9

^{*} Estimated

Most agencies recognize the importance of performance standards and, when they have not been established through state or federal law, have developed standards internally. Standards applicable to the hearing process originate from five sources:

- federal laws;
- state statutes and administrative rules;
- agency policies and procedures;
- case law; and
- contracts and interagency agreements.

Because of the large number of agencies and the many different types of hearings included in our analysis, we were not able to conduct an exhaustive review of all standards included in statutes and administrative rule. In addition, some existing standards apply to activities that are the responsibility of support or investigative staff, or to the entire process, rather than exclusively to segments of the process controlled by hearing officers. For example, although federal law requires DWD's Equal Rights Division to resolve housing discrimination cases within one year of the initial complaint, complaints are investigated by other staff before a hearing can be held. Similarly, hearing officers who are subject to timeliness standards may be required

to rely on timely referrals from staff in other agencies and in some instances must also rely on these staff to schedule hearings promptly. For example:

- Although statutes require DOA's Division of Hearings and Appeals to schedule juvenile aftercare cases for hearing within 30 days of a complaint being filed, it is the Department of Corrections, not the Division, that is responsible for referring the cases involving juvenile aftercare in a timely fashion.
- Although an interagency agreement between the Department of Commerce and DWD requires that contested case hearings related to plumbing credentials be held by DWD within 14 days of the initial complaint, Department of Commerce staff are responsible for scheduling the hearings.

63 standards apply to hearing officers' timeliness and productivity. We identified 97 standards that apply to various aspects of the contested case hearing process. We also found four additional standards for which there were no contested cases in FY 1998-99, which we excluded from the analysis. Of the 97 total standards, 65 apply to activities performed by a hearing officer, and the remaining 33 apply to activities that are the responsibility of support or investigative staff, or to a process that may include time that is not controlled by the hearing officer. In our review of standards for contested cases, we focused on the 65 standards that apply to functions under the exclusive or predominate control of hearing officers. Of these, 64 apply to timeliness and productivity, while 1 applies to the quality of decisions issued.

Standards Related to Timeliness and Productivity

Timeliness standards range from standards for writing pre-hearing conference summaries to annual goals for case resolution. For example:

- Federal regulations require DWD, on an annual basis, to resolve at least 60 percent of its unemployment insurance cases within 30 days, and at least 80 percent within 45 days.
- State statutes require hearing officers with the Employment Relations Commission to issue proposed decisions for complaint cases within 60 days.

- DOA's Division of Hearings and Appeals has developed an internal standard for special education cases referred from the Department of Public Instruction, which requires hearing officers to issue a pre-hearing conference summary and scheduling order within three days after the pre-hearing conference.
- The Personnel Commission adopted an internal standard of resolving 61 contested cases per hearing officer per year.

Of the 63 timeliness and productivity standards over which hearing officers have direct control:

- 40 were established by the agencies themselves;
- 15 were established by state statutes or administrative rules;
- 6 were established through interagency agreements or by contract; and
- 2 were established by federal regulations.

Most timeliness standards apply to decision-writing.

The standards for timeliness and productivity apply to various aspects of the hearing process. Most apply to the amount of time a hearing officer has to write a decision:

- 26 apply to the amount of time a hearing officer has to issue a decision after the hearing is held, the briefing schedule is complete, and the case is ready for a decision;
- 16 apply to scheduling pre-hearing conferences and hearings;
- 7 apply to scheduling and issuing a decision;
- 6 apply to responding to requests and correspondence;
- 4 apply to drafting conference and case summaries;
- 2 apply to annual caseload goals; and
- 2 apply to submitting drafts or dictation.

The time limit for writing decisions varies from 7 to 90 days.

The limit on the time hearing officers may take to write their decisions varies from 7 to 90 days, as shown in Table 8. Some agencies, such as the Employment Relations Commission, have developed different standards for different types of cases, based on the complexity of the case type. In contrast, other agencies have developed a uniform standard for timely decision writing, regardless of case complexity. For example:

- In DOA's Division of Hearings and Appeals, a uniform 30-day standard applies to miscellaneous litigation cases, Fair Hearing cases, and general government cases. The complexity of these case types varies significantly.
- The Department of Agriculture, Trade and Consumer Protection has a single 60-day standard for all cases.

Two agencies do not have measurable standards for their hearing officers.

Although most agencies have standards that apply to the timeliness or productivity of their hearing officers, we found that 2 of the 14 agencies that conduct hearings—the Department of Veterans Affairs and the Office of the Commissioner of Railroads—do not have measurable standards that apply to the hearings they conduct. In addition, although the Department of Transportation has standards applicable to administrative suspensions of driver licenses for operating a motor vehicle while intoxicated, it does not have measurable standards for cases involving uninsured motorists.

Officials of the Department of Veterans Affairs and the Office of the Commissioner of Railroads indicated that no standards are in place because the one hearing officer each agency employs is directly supervised by the agency head, an arrangement they believe provides sufficient oversight and allows for close management review of the hearing process.

Table 8

Timeliness Standards for Decision Writing FY 1998-99

Tax Appeals Commission Small claims*** Statutory 30 Days DWD-Equal Rights Division DWD-Equal Rights Division DWD-Equal Rights Division DWD-Division of Unemployment Insurance DWD-Division of Unemployment Insurance DWD-Division of Vocational Rehabilitation DOA-General Government Unit* DOA-Work and Family Services Unit* Diffice of the Commissioner of Insurance Employment Relations Commission Declaratory rulings and misc. Employment Relations Commission Union election representation Department of Regulation and Licensing DWD-Division of Unemployment Insurance Department of Agriculture, Trade and Consumer Protection Employment Relations Commission Complaint cases Statutory	Established Standard	<u>Case Type</u>	Source of Standard
DWD-Division of Unemployment Insurance Tax Appeals Commission Small claims*** Statutory 30 Days DWD-Equal Rights Division DWD-Equal Rights Division DWD-Division of Unemployment Insurance DWD-Division of Unemployment Insurance DWD-Division of Unemployment Insurance DWD-Division of Vocational Rehabilitation DOA-General Government Unit* DOA-Work and Family Services Unit* DOA-Work and Family Ser	•	Corrections cases**	Internal
DWD-Equal Rights Division	DWD-Division of Unemployment Insurance		Interagency agreement Statutory
Department of Regulation and Licensing All cases Internal 60 Days DWD-Division of Unemployment Insurance Department of Agriculture, Trade and Consumer Protection Employment Relations Commission All cases Internal Complaint cases Statutory	DWD-Equal Rights Division DWD-Equal Rights Division DWD-Division of Unemployment Insurance DWD-Division of Unemployment Insurance DWD-Division of Vocational Rehabilitation DOA-General Government Unit* DOA-Work and Family Services Unit* DOA-Work and Family Services Unit* Office of the Commissioner of Insurance Employment Relations Commission	Public Employe Health and Safety Law Wisconsin Fund—Private Sewage cases Misc. cases from Commerce All cases General government Fair Hearing cases Misc. litigation cases Default decisions Declaratory rulings and misc.	Statutory Interagency agreement Interagency agreement Wis. Adm. Code Internal Internal Internal Internal Internal Internal
DWD-Division of Unemployment Insurance PECFA reimbursement cases Interagency agreement and Consumer Protection All cases Internal Employment Relations Commission Complaint cases Statutory	•	All cases	Internal
Employment Relations Commission Bargaining unit clarification Internal Department of Employe Trust Funds All cases Contract Personnel Commission All cases Internal	DWD-Division of Unemployment Insurance Department of Agriculture, Trade and Consumer Protection Employment Relations Commission Employment Relations Commission Department of Employe Trust Funds	All cases Complaint cases Bargaining unit clarification All cases	Statutory Internal Contract
90 Days DWD-Equal Rights Division Discrimination cases Internal DWD-Division of Unemployment Insurance Unemployment insurance tax status Internal DWD-Worker's Compensation Division All cases Statutory Office of the Commissioner of Insurance Non-default decisions Internal Employment Relations Commission Grievance arbitration cases Internal Tax Appeals Commission Non-small claims cases Internal * DOA's Division of Hearings and Appeals	90 Days DWD-Equal Rights Division DWD-Division of Unemployment Insurance DWD-Worker's Compensation Division Office of the Commissioner of Insurance Employment Relations Commission Tax Appeals Commission	Discrimination cases Unemployment insurance tax status All cases Non-default decisions Grievance arbitration cases	Internal Internal Statutory Internal Internal

^{*} DOA's Division of Hearings and Appeals

** Hearing officers are to complete the dictation of their decision within 7 days.

*** Applies to written decisions only.

Standards Related to Quality

We found only one measurable standard related to the quality of decisions. We were able to identify only one measurable standard that attempts to address the quality of hearing officer decisions. Under federal regulations, at least 80 percent of all decisions issued by hearing officers in DWD's Division of Unemployment Insurance must meet a minimum standard of quality that is developed by the United States Department of Labor. A decision's quality is determined through a review process that tests, for example, whether required hearing procedures were followed properly, whether the hearing was conducted impartially, and whether the hearing officer provided sufficient factual and legal support for the decision. A federal report found that 98.8 percent of cases the Division resolved between April 1998 and March 1999 met the federal quality standard. Data are unavailable for the two previous years.

Although we identified only one measurable quality standard during the course of our review, there are numerous other quality standards that are not easily measurable. For example, TRANS 113.04 (11), Wis. Adm. Code, requires hearing officers in the Department of Transportation who resolve cases involving operation of a motor vehicle while intoxicated to conduct hearings in an impartial, objective manner.

Some believe that using quantitative methods to track the quality of hearing officer decisions is unnecessary because most decisions are subject to one or more levels of review. Decisions in all contested cases resolved by state hearing officers are subject to at least one of the following:

- Supervisory review within the agency: for example, the Division Administrator in DOA's Division of Hearings and Appeals reads all decisions to be issued by the General Government Unit, while supervisors in the Work and Family Services Unit review each decision completed by hearing officers in their unit.
- Review by an agency head: for example, the Commissioner of Railroads reviews all proposed decisions written by the hearing officer before issuing the final decision.

- Administrative review by a special board or commission established for that purpose: for example, the Labor and Industry Review Commission reviews discrimination, worker's compensation, and unemployment insurance decisions issued by hearing officers within DWD.
- Review by the court system once all options for administrative review have been exhausted.

Progress Toward Meeting Standards

Although most agencies have measurable performance standards for hearing officer timeliness and productivity, in many instances they do not have data for determining whether these standards have been achieved. In addition, we found that some agencies were not using all available data to determine the extent to which standards were met. However, when information was available to measure progress, we found that agencies met the majority of their standards.

Not all agencies routinely monitor hearing officer performance. Two agencies—the Employment Relations Commission and the Department of Regulation and Licensing—were able to provide performance data for all of their standards using routinely generated reports. Twelve other agencies used routine reports to provide information on progress in meeting some standards, but they also had to produce special reports or manually collect data related to a number of standards. Thus, it appears that these agencies do not routinely measure their performance against all standards.

Six agencies were unable to provide performance data when requested. Therefore, we were unable to determine whether these agencies met a significant number of standards related to timeliness. For example:

- The Department of Agriculture, Trade and Consumer Protection does not measure its performance against an internal standard that requires hearing officers to draft proposed decisions within 60 days after the close of the hearing process.
- The Office of the Commissioner of Insurance does not measure its performance against an internal standard that requires hearing officers to draft proposed decisions within 90 days after the close of the hearing process.

- The Department of Revenue does not measure its performance against a statutory standard that requires hearing officers to resolve contested cases related to appeals of property tax assessments prior to November 1 or within 60 days, whichever expires later.
- The Department of Transportation's Bureau of Field Services does not measure its performance against an internal standard that requires hearing officers to resolve driver license suspension hearings related to operation of a motor vehicle while intoxicated within 45 minutes.
- The Department of Financial Institutions' Division of Securities does not measure its performance against statutory standards that require noticing a hearing within 10 days of an order and holding the hearing within 60 days of the official notice.
- The Department of Employe Trust Funds has not measured the performance of its contracted hearing officers against contract requirements to issue decisions within 60 days after the close of the hearing process.

Of the 97 standards we identified, we found information that allowed us to measure performance for only 53, or 54.6 percent, as shown in Table 9. Of these 53 standards, agencies met 38, or 71.7 percent, in FY 1998-99.

Table 9

Compliance with Hearing Process Standards
FY 1998-99

Agency	Total <u>Standards</u>	Number of Standards <u>Measured</u>	Number of Standards <u>Met</u>	Percentage of Measured Standards <u>Met</u>
DOA's Division of Hearings and Appeals	34	19	15	78.9%
Department of Agriculture, Trade				
and Consumer Protection	1	0	-	-
Department of Employe Trust Funds	6	0	-	-
Department of Financial Institutions	3	0	-	-
Department of Regulation and Licensing	3	3	2	66.7
Department of Revenue	1	0	-	-
Department of Transportation	3	0	-	-
Department of Veterans Affairs	0	-	-	-
DWD	29	19	13	68.4
Employment Relations Commission	8	8	4	50.0
Personnel Commission	3	2	2	100.0
Tax Appeals Commission	3	2	2	100.0
Office of the Commissioner of Insurance	3	0	-	-
Office of the Commissioner of Railroads	_0	<u>-</u> -		-
Total	97	53	38	71.7%

Hearing officers met 71.9 percent of the standards that were measured.

As noted, 65 of the 97 established standards apply to aspects of the hearing process that are under the control of hearing officers. Of these 65 standards, agencies measured progress in meeting 32, as shown in Table 10. We found that agencies met 23, or 71.9 percent, of these 32 standards during the most recent reporting period for which data were available.

Table 10

Compliance with Hearing Officer Standards
FY 1998-99

Agency	Total Number of <u>Standards</u>	Number of Standards <u>Measured</u>	Number of Standards <u>Met</u>	Percentage of Measured Standards <u>Met</u>
DOA's Division of Hearings and Appeals	24	9	6	66.7%
Department of Agriculture, Trade				
And Consumer Protection	1	0	-	-
Department of Employe Trust Funds	3	0	-	-
Department of Financial Institutions	2	0	-	-
Department of Regulation and Licensing	3	3	2	66.7
Department of Revenue	1	0	-	-
Department of Transportation	1	0	-	-
Department of Veterans Affairs	0	-	-	-
DWD	17	11	9	81.8
Employment Relations Commission	5	5	2	40.0
Personnel Commission	2	2	2	100.0
Tax Appeals Commission	3	2	2	100.0
Office of the Commissioner of Insurance	3	0	-	-
Office of the Commissioner of Railroads	_0	<u>-</u> -	<u>-</u> -	-
Total	65	32	23	71.9%

We could not assess performance in meeting six statutorily established standards. We found six statutory standards for which five agencies were unable to provide performance data. These standards address things over which hearing officers have control, such as the time to write a proposed decision, and things over which they do not have control, such as ensuring a final decision is issued within a specified amount of time. While officials in all five agencies assert that the statutory standards are being met, we were unable to verify agency performance in the following areas:

- s. 70.85(4)(b)(3), Wis. Stats., requires the Department of Revenue to issue an order prior to November 1 or within 60 days, whichever is later, for certain property tax assessment cases;
- s. 343.305(8)(b)(5), Wis. Stats., requires the Department of Transportation to issue a decision on administrative suspensions within 30 days from the issuance of a citation for operating a vehicle while intoxicated;

- s. 601.62(3)(a), Wis. Stats., requires the Office of the Commissioner of Insurance to schedule hearings within 60 days of receiving a request, subject to the party voluntarily waiving the requirement;
- s. 551.61(2), Wis. Stats., requires the Department of Financial Institutions' Division of Securities both to notice hearings within 10 days of a written request to hold hearings within 60 days of the notice of hearing; and
- s. 230.44(4)(f), Wis. Stats., requires the Personnel Commission to render a final decision within 90 days after a hearing related to certain civil service appeals.

Because the development of standards and the collection of performance information is key to the efficient and effective operation of any state agency or program, *we recommend*:

- all state agencies that conduct contested case hearings develop standards for their hearing officers that, at a minimum, set limits on the amount of time a hearing officer is permitted to write a decision upon completion of a hearing; and
- measure on an annual basis the extent to which hearing officers have complied with these standards.

Assessing the Quality of Hearing Officer Performance

The effects of untimely hearing officer decisions can be serious and can include delays in the protection of public health, safety, and welfare from incompetent or unsafe practitioners; the loss or delay of service delivery or benefits; loss of employment; or loss of business opportunities for qualified professionals. The effects of poor-quality decisions are similarly varied. For example, incorrect decisions can fail to uphold individuals' rights under the law. Also, staff in several departments have noted that hearing officer decisions set precedents for many programs; therefore, an incorrect decision may compel state agencies to alter policies or programs inappropriately.

The quality of hearing officer decisions is difficult to measure because indicators of quality are not easily quantified, and it is difficult to obtain consensus on the best indicators of quality. In addition, the large number of agencies and hearing officers that conduct hearings prevents a direct review of decision quality. As noted, only one agency has a measurable standard related to decision quality, and its standard is part of a federal requirement.

The quality of hearing officer decisions is difficult to measure.

Because of the absence of measurable standards and the sheer volume of cases involved in our review, we had no direct means of assessing the quality of hearing officer decisions. However, we did review another indicator of quality that was available to us: the extent to which the decisions of hearing officers were reversed at a higher level of review. We found that relatively few decisions have been reversed in recent years.

Appeal Rates

There are three levels of appeal for hearing officer decisions. The first two involve administrative review and are completed by state agency staff. The third is known as judicial review and is completed by the court system.

Two levels of administrative review exist for most types of contested cases handled by hearing officers; the first is the decision by the hearing officer, and the second is a review of the hearing officer's decision. For example, the Labor and Industry Review Commission provides a second level of administrative review for many employment cases because it resolves appeals of hearing officer decisions issued by DWD. For most other case types, the agency head or a statutory board reviews proposed hearing officer decisions before the agency issues a final decision. Additionally, for some case types, a party may petition an agency for a rehearing based on new evidence or on material errors of law or fact. However, once a final decision has been issued by an agency and any rehearing of a case is complete, the parties must look to judicial review for further appeal.

The rate at which hearing decisions are appealed is generally low.

With the exception of DWD, we found that the number of cases appealed through judicial review or second-level administrative review—especially the rate of appeal to circuit court—was generally low. Comparable overall appeal statistics were not available for all state agencies, including DOA, which was able to provide appeal statistics only for the Corrections Unit and only for 1998. However, those agencies that did collect data had very few cases appealed after all avenues for administrative review within the agency had been exhausted. For example:

- 26, or 5.1 percent, of the 513 decisions issued between FY 1994-95 and FY 1998-99 by hearing officers contracted by the Department of Employe Trust Funds were appealed to circuit court;
- 117, or 2.1 percent, of the 5,685 decisions issued between FY 1994-95 and FY 1998-99 by hearing officers with the Tax Appeals Commission were appealed to circuit court;
- 114, or 1.9 percent, of the 5,946 decisions issued in 1998 by hearing officers in the Corrections Unit of DOA's Division of Hearings and Appeals were appealed to circuit court;
- 39, or 1.6 percent, of the 2,387 decisions issued between FY 1994-95 and FY 1998-99 by the Personnel Commission were appealed to circuit court; and
- 9, or 1.5 percent, of the 601 decisions issued between FY 1994-95 and FY 1998-99 by the hearing officer for the Department of Agriculture, Trade and Consumer Protection were appealed to circuit court.

Decisions issued by hearing officers with DWD generally had a higher rate of appeal than others included in our review. The Labor and Industry Review Commission was established by statute to handle petitions seeking review of DWD's decisions related to unemployment insurance, worker's compensation, and certain equal rights cases. Appeal rates to the Commission for DWD cases may be higher than the appeal rates to circuit court at other agencies because:

- Those who appeal to the Commission incur no direct costs, which is not true of circuit court appeals.
 Circuit courts have filing fees as well as costs normally associated with hiring attorneys for representation.
- The process is significantly simpler than for appeals to circuit court because a letter is sufficient to petition the Commission for a review.
- Parties do not have a chance to respond to a draft of the hearing officer's decision, which is allowed by some other agencies.

DWD hearing officer decisions are final. In several other agencies, decisions are proposed by the hearing officer, and the agency head or statutory board has the opportunity to modify them.
 Consequently, there is less administrative review of decisions in DWD than in other agencies.

In 1998, 41.7 percent of worker's compensation cases were appealed to the Labor and Industry Review Commission. We found that appeal rates to the Commission were the highest for worker's compensation cases. Commission staff believe that is the case because insurers frequently appeal agency decisions that are not in their favor, and because a greater percentage of parties to worker's compensation cases are represented by legal counsel than is typically the case for other DWD hearings. Of the 1,177 decisions issued by DWD's Worker's Compensation Division in 1998, 491, or 41.7 percent, were appealed to the Commission. In contrast, of the 286 decisions issued by DWD's Equal Rights Division, 96, or 33.6 percent, were appealed. Of the 19,097 decisions issued by DWD's Division of Unemployment Insurance, 2,402, or 12.6 percent, were appealed.

Reversal Rates

While we were not able to obtain comparable statistics for all agencies regarding the rate at which circuit courts reversed contested case decisions, available data suggest that few decisions are reversed in circuit court. For example, between FY 1994-95 and FY 1998-99:

- 5, or 1.0 percent, of the 513 decisions issued by the Department of Employe Trust Funds were reversed in circuit court; and
- 9, or 0.2 percent, of the 5,685 decisions issued by the Tax Appeals Commission were reversed in circuit court.

Between 1995 and 1998, the Labor and Industry Review Commission reversed 7.8 percent of appeals. Additionally, we found that few decisions issued by hearing officers in DWD were reversed by the Labor and Industry Review Commission. Of the 12,453 hearing officer decisions that were appealed between 1995 and 1998, the Commission reversed 971, or 7.8 percent, as shown in Table 11. With 11.9 percent of its appealed decisions reversed, at least in part, during this period, DWD's Worker's Compensation Division had the highest reversal rate. However, when reversal rates are measured as a percentage of all decisions issued by DWD hearing officers, rather than as a percentage of appeals, all three DWD divisions have had comparable rates.

Table 11

Reversal Rate of DWD Hearing Officer Decisions at the Labor and Industry Review Commission
1995 through 1998

					Number
				Number	Reversed as a
	Number of	Number of	Number of	Reversed as	Percentage of
	Cases	Decisions	Decisions	a Percentage	All Cases
<u>Division</u>	Resolved	Appealed	Reversed*	of Appeals	Resolved
Worker's Compensation	35,658	2,054	245	11.9%	0.7%
Equal Rights	4,771	489	35	7.2	0.7
Unemployment Insurance	77,144	9,910	<u>691</u>	7.0	0.9
Total	117,573	12,453	971	7.8%	0.8%

^{*} Includes decisions that were reversed, reversed in part, or reversed and remanded.

Evaluating Hearing-Related Support Staff

Concerns have been raised about the adequacy of hearing officers supervision.

Because individual hearing officers can have a great influence on individuals as well as on program policies and procedures, and because it is difficult to establish measurable standards for the quality of their decisions, working to achieve and maintain the quality of these decisions through individual performance evaluations is important. In general, we found that the performance of hearing officers was reviewed and served as a means of quality control, but these evaluations were not always conducted regularly. Some have questioned whether hearing officer supervision is adequate and whether a lack of oversight, particularly in DWD, has led to performance problems caused by hearing officers working at home and establishing their own work rules. We found little support for most of these concerns. However, we did find that supervision of a small number of support staff could be improved.

Although a number of agencies did not collect adequate information, most agencies demonstrated a commitment to assessing individual hearing officer performance. For example:

- The Employment Relations Commission uses two case management systems—an automated case docketing system and a biweekly status report—that provide supervisors with information on the productivity of each hearing officer. Additionally, hearing officer performance toward meeting agency standards is incorporated into the annual employe evaluation process.
- As part of its annual employe evaluations, the Department of Regulation and Licensing compares each hearing officer's performance to agency standards for three phases of its hearing process.
- DWD's Equal Rights Division allows its hearing officers considerable day-to-day independence, but progress toward meeting established standards is tracked in monthly status reports and is used as one component of annual evaluations.

Because most concerns raised involve work rules and oversight of hearing officers in DWD, we reviewed DWD's practices more thoroughly. We found that although it has a telecommuting policy that allows any employe to work at home on a full-time basis once supervisory approval has been granted, the only DWD hearing officers allowed to work at home on a full-time basis were located in the Equal Rights Division. Our review of individual performance statistics found that three of the four hearing officers who worked at home met the Division's timeliness and productivity standards, while two of the five hearing officers who worked in DWD's offices met the standards.

In 1999, employe evaluations were not conducted for hearing officers in DWD's Worker's Compensation Division. On the other hand, we did find some evidence to suggest that management and supervision of hearing officers and the hearing functions within DWD could be improved. For example, although annual evaluations are required for all state employes by ER 45.03(3), Wis. Adm. Code, we found that they were not conducted for any of the 20.6 FTE hearing officers in DWD's Worker's Compensation Division during 1999. These evaluations are important because, as noted, they are one of the primary means agencies use to measure hearing officer performance and address concerns.

We also reviewed the supervision and performance of 3.5 FTE legal assistants in the hearing records unit of DWD's Division of Unemployment Insurance. These staff, who all work out of their homes,

are responsible for preparing typed summaries from audio tapes made during hearings. Labor and Industry Review Commission staff raised timeliness concerns about these legal assistants because of delays in the appeals process for some unemployment insurance cases, which hampered the Commission's ability to meet federal timeliness standards.

Legal assistants in the Division of Unemployment Insurance could work only 50 percent of the time and still meet their performance standards. Established productivity standards require the legal assistants to transcribe a minimum number of minutes of recorded hearings for hours worked. We question whether current productivity standards are meaningful, because we estimate that legal assistants could meet them while working only half of the available hours for which they are paid. Although staff must be permitted adequate time to account for vacations, illness, training, and related activities, we do not believe the current standard is sufficient to ensure that these staff are productively engaged.

We identified several other deficiencies in the supervision of these employes. First, no employe evaluations had been conducted for over two-and-one-half years. Second, required monthly productivity reviews were not conducted for an 18-month period between May 1998 and November 1999. Finally, even though existing productivity standards are not stringent, legal assistants have not consistently met them, as required by the telecommuting agreements. Therefore, to improve the supervision and productivity of these staff, we recommend the Department of Workforce Development:

- <u>conduct annual employe evaluations;</u>
- *implement required monthly productivity reviews*;
- <u>review telecommuting agreements when productivity</u> <u>standards are not met; and</u>
- <u>increase existing productivity standards to ensure</u> <u>that legal assistants are productively engaged for</u> the hours of work for which they are paid.

ORGANIZATION OF HEARING OFFICER RESPONSIBILITIES

Approaches to conducting contested case hearings vary from state to state.

We reviewed the State's organizational approach to resolving contested case hearings and compared it with those of other states. We found that approaches differ from state to state, and no single approach is without some drawbacks. In addition, although the Legislature may wish to consider further consolidation of hearing functions to encourage efficiency, any cost savings are likely to be limited.

History of Consolidation of Hearing Responsibilities

Over 20 years, many hearing functions have been consolidated within DOA.

Over the past 20 years, responsibility for a number of different types of contested case hearings has been consolidated within DOA. As shown in Table 12, consolidation and expansion of DOA's hearing authority began shortly after designation of the agency's hearing responsibilities in 1978.

A number of states have also consolidated some hearing responsibilities within a single agency, known as a central panel. Like DOA's Division of Hearings and Appeals, central panels in other states typically hold hearings related to social services, education, natural resources, and transportation issues. Central panels in a number of states also hold hearings related to worker's compensation, unemployment compensation, regulation and licensing, and agriculture, which are resolved in Wisconsin by the agency responsible for regulating those programs and industries.

All of the 11 general categories of cases resolved by Wisconsin agencies are conducted by central panels in at least one other state. However, centralization of some case categories was more common than others. For example, in examining information that 17 states with central panels submitted in response to a survey by DOA's Division Hearings and Appeals, we found:

- in 16 states, central panels conduct social services hearings;
- in 14 states, central panels conduct hearings related to natural resources issues;
- in 13 states, central panels conduct agricultural hearings;

Table 12

Consolidation and Expansion of Hearing Authority within DOA's Division of Hearings and Appeals

<u>Year</u>	Responsibility
1978	The Division of Natural Resources Hearings was created and attached to DOA.
1980	The Division of Natural Resources Hearings agreed to hold crime victim compensation hearings for the Attorney General; authority for holding these hearings was enacted in 1986.
1983	The Department of Health and Family Services' Division of Nursing Home Forfeiture Appeals was merged with DOA's Division of Natural Resources Hearings and renamed the Division of Hearings and Appeals.
1987	The Legislature gave the Division of Hearings and Appeals authority to hold hearings related to disturbance of burial sites.
1990	1989 Wisconsin Act 31 created the Department of Corrections, which was previously a division of the Department of Health and Family Services, and transferred hearing authority for corrections cases to DOA's Division of Hearings and Appeals.
1994	1993 Wisconsin Act 16 abolished the Transportation Commission and transferred authority for a portion of transportation-related hearings to the Division of Hearings and Appeals.
1996	1995 Wisconsin Act 370 transferred responsibly for public assistance cases to DOA's Division of Hearings and Appeals and moved the Division of Economic Support from the Department of Health and Family Services to DWD.
1996	1995 Wisconsin Act 27 transferred responsibility for the low-income energy assistance program from the Department of Health and Family Services to the Division of Hearings and Appeals with responsibility for conducting hearings associated with the program.
1996	In 1996, the Legislature gave the Division of Hearings and Appeals additional position authority to conduct special education hearings for the Department of Public Instruction.
1999	1999 Wisconsin Act 9 granted the Division of Hearings and Appeals position authority to conduct motor vehicle dealer bond hearings for the Department of Transportation.

- in 13 states, central panels conduct hearings related to regulation and licensing;
- in 11 states, central panels conduct hearings related to education issues;
- in 10 states, central panels conduct transportation hearings;
- in 5 states, central panels conduct hearings related to civil rights and discrimination;
- in 7 states, central panels conduct hearings related to the retirement system;
- in 3 states, central panels conduct worker's compensation hearings; and
- in 2 states, central panels conduct unemployment insurance hearings.

More specific information on the types of cases conducted by central panels in each of 17 states is presented in Appendix III.

Benefits of Additional Consolidation

Additional consolidation of hearing functions is likely to produce few benefits.

As noted, 79.3 percent of all hearing officers work in either DWD or DOA's Division of Hearings and Appeals and conduct 75.7 percent of all contested case hearings. Transferring responsibility for one of these agency's hearings to the other is not likely to produce substantial benefits. First, the caseload of each agency is already adequate to provide economies of scale that are not likely to be enhanced through further consolidation. Second, such a transfer could be disruptive given the number of staff involved and the new organizational structures that would have to be planned and implemented. Third, consolidation within DOA would likely provide few benefits related to independence, because most DWD cases can be reviewed by the Labor and Industry Review Commission at no cost to the party requesting the appeal. Finally, consolidation within DWD would likely raise a number of concerns because DWD has not developed special expertise in the types of cases currently overseen by DOA's Division of Hearings and Appeals, and some may view the transfer as decreasing the objectivity of the hearing function because the Division of Hearings and Appeals is attached to DOA for administrative purposes only.

Consequently, any benefits derived from additional consolidation are likely to be associated with the transfer of hearing responsibilities from agencies that currently conduct few hearings to either DWD or DOA. Such consolidation might both decrease overall costs through economies of scale and, by separating the oversight function from the agency responsible for program administration, increase the independence or perceived independence of the opinions rendered.

Through interagency agreements, some agencies have already transferred their hearing responsibilities to either DOA or DWD. For example, DOA has responsibility for special education cases referred from the Department of Public Instruction under a memorandum of understanding, and DWD conducts Petroleum Environmental Cleanup Fund Award (PECFA) program cases and certain professional licensing cases referred from the Department of Commerce under an interagency agreement. In addition, some Wisconsin agencies have explored the possibility of transferring their hearing responsibilities to DOA's Division of Hearings and Appeals.

The types of hearings likely to be most suitable for consolidation outside of the agencies in which they are currently conducted are those that:

- are limited in number and therefore most likely to result in economies of scale if consolidated;
- have no special need to be conducted by the agency responsible for program administration;
- do not already ensure sufficient independence through the possibility of review by an objective board, commission, or other oversight entity; and
- would appear to fit in well with the types of cases currently conducted by either DWD or DOA.

Because DOA's Division of Hearings and Appeals already deals with numerous types of cases and by its structure is intended to be independent, more cases may be candidates for consolidation within DOA than within DWD. We reviewed the current distribution of hearing responsibilities and identified several that may be candidates for consolidation based on the criteria noted, although not all are likely to result in cost savings. These include:

 DWD's Division of Vocational Rehabilitation, which resolved 11 cases in FY 1998-99 at an estimated cost of \$2,364 per case;

- the Department of Agriculture, Trade and Consumer Protection, which resolved 124 cases in FY 1998-99 at an estimated cost of \$631 per case; and
- the Department of Veterans Affairs, which resolved 71 cases in FY 1998-99 at an estimated cost of \$311 per case.

Although the cases handled by DWD's Division of Vocational Rehabilitation are currently contracted to independent hearing officers who have expertise in these issues, the cost per case is high, and transferring case responsibilities to DOA may result in some cost savings.

In the past, officials of the Department of Agriculture, Trade and Consumer Protection have conferred with DOA's Division of Hearings and Appeals about the potential for transferring the hearing function and 0.5 FTE positions to DOA. However, because of concerns over the loss of position authority, no agreement was reached.

The Department of Veterans Affairs currently devotes approximately 0.4 FTE positions to conducting hearings on veterans benefits. Officials in the Department believe they are able to handle the current workload with existing staff, including a portion of both the general counsel's and a support person's time. However, they indicate they would seriously pursue an agreement to transfer hearing authority to DOA if the current annual volume of approximately 70 contested cases per year should increase significantly. No cost savings could be achieved from such a transfer, because these cases are handled by staff who could not be eliminated if responsibilities were transferred to DOA. The only likely benefit would be to increase the perceived independence of the process.

Officials of DOA's Division of Hearings and Appeals indicate that they are opposed to assuming additional hearing responsibilities without additional funding and position authority. They are especially concerned about clerical support, which they indicate would be needed to send out hearing notices, schedule hearings, and produce transcripts.

APPENDIX I

CONTESTED CASE PROCEDURES

Contested case procedures differ according to statutory, administrative rule, and agency requirements. However, contested cases share certain common features, including the fact that a written request for a hearing is required; that a hearing officer is assigned to the case; and that a decision is issued on the case, almost always in written form, by the hearing officer. Contested cases are resolved under the following general process:

- 1. A party files a written request for a hearing with the appropriate agency. If the case is found to have merit, it becomes a contested case and is assigned to a hearing officer. The location of the hearing officer is determined by the following factors:
 - a) Statutes direct certain cases to hearing officers in DOA's Division of Hearings and Appeals.
 - b) Cases from some agencies, such as the Department of Public Instruction, are heard by hearing officers at DOA or another agency under an interagency agreement.
 - c) Other cases are handled by agency staff responsible for the administration of a program or regulation of an issue pertaining to the case.
- 2. The hearing officer may conduct pre-hearings to encourage a settlement between the parties of interest.
- 3. Under ch. 227, Wis. Stats., notice must be sent to all parties at least ten days before most contested case hearings.
- 4. Parties of interest may issue subpoenas, and in some cases present evidence, prior to the hearing.
- 5. The hearing is conducted, during which parties have the opportunity to present evidence and rebut or present countervailing evidence. Parties may conduct cross-examinations.
- 6. Evidence may be allowed under a less-stringent standard than normally applies to court cases. All evidence becomes part of the official record.
- 7. The hearing officer reviews the law and the evidence and completes a decision:
 - a) For some cases, the hearing officer's decision is final.
 - b) For other cases, the hearing officer issues a proposed decision. Adversely affected parties may have the right to review the decision. Then, an agency official, typically the agency head or commissioner, reviews the hearing officer's decision before issuing a final decision.
- 8. Parties adversely affected by a final decision may have the opportunity for a second administrative review, such as the right to a rehearing or review by an outside agency like the Labor and Industry Review Commission. Parties may also seek judicial review in court.

APPENDIX II

AGENCY HEARING OFFICER ACTIVITIES

This appendix provides a description of each of the 14 state agencies that employed hearing officers in FY 1998-99. These descriptions include information on:

- the types of hearings for which state agencies are responsible;
- expenditures for hearing functions, by funding source;
- the number of hearing officers and related staff;
- trend information on the number of cases opened, the number of cases resolved through hearing, and the number of cases resolved in other ways by hearing officers; and
- a summary of the results of oversight efforts agencies have undertaken to ensure the timeliness and quality of hearing officer decisions.

Staffing, expenditures, and budget information are estimates provided by agency staff and are based on staff time that was related to resolving contested cases. Consequently, agency resources allocated to the investigation of complaints, rule-making, education, or other activities unrelated to resolving contested cases were not included in the agency descriptions. We collected caseload information from FY 1994-95 through FY 1998-99. However, not all agencies were able to provide caseload data for all five years. In those instances, all available data were included.

We collected information on the average time required by agencies to resolve contested cases through the hearing process, as well as the average performance of agency staff in meeting timeliness standards. Averages present a straightforward measure of typical performance and provide a reasonable estimate of how long it took state hearing officers to carry out their duties. However, performance data based on averages can be misleading if the time required to complete a case or hearing-related task is skewed by a few atypically long or short cases.

This appendix begins with activity summaries of DWD and DOA, which have the largest staffing and expenditure levels and resolve the most cases. Summaries for the 12 other agencies that employed hearing officers in FY 1998-99 are organized alphabetically.

Agency	<u>Page</u>
Department of Workforce Development Equal Rights Division Division of Unemployment Insurance Worker's Compensation Division Division of Vocational Rehabilitation	II - 3
DOA's Division of Hearings and Appeals Corrections Unit General Government Unit Work and Family Services Unit	II - 17
Department of Agriculture, Trade and Consumer Protection	II - 29
Department of Employe Trust Funds	II - 33
Department of Financial Institutions	II - 37
Department of Regulation and Licensing	П - 41
Department of Revenue	II - 45
Department of Transportation Bureau of Driver Services Bureau of Field Services	II - 49
Department of Veterans Affairs	II - 55
Employment Relations Commission	II - 59
Office of the Commissioner of Insurance	II - 63
Office of the Commissioner of Railroads	II - 67
Personnel Commission	II - 71
Tax Appeals Commission	II - 75

DEPARTMENT OF WORKFORCE DEVELOPMENT

DWD oversees work-related programs aimed at assisting people in obtaining employment opportunities in Wisconsin. A total of 57.0 FTE staff serve as hearing officers, supported by an estimated 61.2 FTE administrative and supervisory staff in four divisions, who perform clerical, transcription, scheduling, coordination, and oversight tasks. The Division of Vocational Rehabilitation contracts for hearing officer services, which are not included in the FTE total. In FY 1998-99, expenditures related to hearings totaled almost \$10.7 million, of which 51.3 percent was funded with federal revenue, 39.4 percent with program revenue, and the remaining 9.3 percent with general purpose revenue.

The Equal Rights Division conducts hearings on discrimination related to employment, housing, education, public accommodations, and retaliation cases. The Worker's Compensation Division holds hearings on worker's compensation benefits. The Division of Unemployment Insurance hears cases involving unemployment insurance benefits and a small number of miscellaneous cases from Department of Commerce through an interagency agreement. The Division of Vocational Rehabilitation conducts hearings related to eligibility for vocational rehabilitation services, selection and reimbursement of rehabilitation providers, and appeals related to the quality and delivery of rehabilitation services.

Because hearings are conducted in four separate divisions within DWD, standards relating to hearing officer performance vary, and oversight of the timeliness and quality of decisions appears uneven. However, with the exception of Division of Vocational Rehabilitation cases and certain cases from the Division of Equal Rights, decisions issued by DWD's hearing officers may be appealed to the Labor and Industry Review Commission, which represents a second opportunity for parties to resolve a contested case using administrative review, rather than judicial review in circuit court.

Department of Workforce Development Hearing Expenditures by Funding Source*

FY 1998-99 and FY 1999-2000

Funding Source	FY 1998-99 Expenditures	FY 1999-2000 Budget
General purpose revenue Federal revenue Program revenue	\$ 989,034 5,483,360 4,205,300	\$ 1,053,361 6,431,381 4,530,045
Total	\$10,677,694	\$12,014,787

^{*} Estimated

Equal Rights Division Department of Workforce Development

Origin: Chapter 327, Laws of 1967

Hearing Staff FY 1998-99

Staff Type	Full-Time <u>Equivalent</u>
Hearing officers Support staff	8.4 3.3
Administrative and supervisory Total	1.4 13.1
Total	13.1

^{*} Estimated

Types of Cases Addressed:

- Fair Employment Act discrimination
- Housing discrimination
- Public accommodation and amusement discrimination
- Post-secondary education discrimination
- Family Medical Leave Act
- Public Employe Health and Safety Law
- Employe Right-to-Know Law
- Elder Abuse Law

Location of Hearings: Statewide

Average Time Period for Hearings

FY 1998-99

Request for hearing to date of hearing*	145.6 days
Length of hearing	5.9 hours
Completion of hearing to issuance of decision	108.7 days
Request for hearing to issuance of decision*	189.4 days

^{*} Measured from the date a case is sent by division investigators to hearing officers for hearing.

Caseload Trends

From FY 1995-96 through FY 1998-99, the number of new cases opened rose 4.3 percent. Although case volume increased during this period, the number of hearings held declined 36.1 percent, and cases resolved without hearings declined 6.2 percent. In total, the number of cases resolved through hearings and withdrawal or settlement without hearings fell by 13.4 percent since FY 1995-96.

Caseload Trends*
FY 1995-96 through FY 1998-99

	FY 1995-96	FY 1996-97	FY 1997-98	FY 1998-99	Percentage Change
Cases Opened	1,125	979	1,038	1,173	4.3%
Hearings Held	302	270	222	193	-36.1
Cases Withdrawn or Settled	963	925	900	903	-6.2
Cases Resolved	1,265	1,195	1,122	1,096	-13.4

^{*} Estimated

Assessment of Hearing Officer Performance

We identified 12 quantifiable performance standards for the Equal Rights Division. Of these, the four standards shown in the following table relate directly to the performance of hearing officers. Eight standards relate to activities that are partially or wholly outside the direct control of hearing officers. Two of these relate to prompt scheduling of hearings; three relate to time allowed for investigations; one relates to total investigations completed during a year, and one to time allowed to reach a final disposition, including investigations; the last standard applies to the timeliness of the Division's initial action on a complaint.

Standards Applicable to Hearing Officer Performance FY 1998-99

Standard	Source of Standard	Agency Performance
Family Medical Leave Act cases: issue decisions within 30 days after the hearing.	s. 103.10(12)(d), Wis. Stats.	82.2 days*
Public Employe Health and Safety Law cases: issue decisions within 30 days after close of the hearing process.	s. 101.055(8)(c), Wis. Stats.	No hearings
Hearing section must dispose of 82 cases per month.	Internal	91.2 cases**
Other cases: issue decisions within 90 days after close of the hearing process.	Internal	108.7 days

^{*} DWD officials indicate that the 30-day standard is often not achieved because parties usually request extensions to allow more time to prepare for the hearing.

State statutes do not provide for a penalty for DWD in the event that statutory requirements, such as the 30-day standard for Family Medical Leave Act decisions, are not met. However, because hearing officers are state employes, failure to meet performance standards could affect pay increases or result in discussions between the hearing officer and his or her supervisor on ways to improve performance.

The Division of Equal Rights uses several means to ensure timeliness of hearings and decisions. An electronic "tickler" system sends reminders to hearing officers once deadlines approach. The hearing officer supervisor monitors hearing officer caseloads and case-aging statistics on a monthly basis, and hearing officers submit monthly status reports on case resolutions and decisions. Monthly activity reports are produced to show, for example, the proportion of decisions issued within 90 days and the number of case dispositions within the month, quarter, and year. To ensure decision quality, the supervisor reads decisions after issuance. Additionally, during annual performance evaluations, the supervisor reviews a selection of decisions and hearing transcripts to evaluate writing skills and assess the hearing officer's conduct during hearings, in addition to considering performance standards noted in the preceding table.

^{**} Performance under this standard was measured for calendar year 1998.

Division of Unemployment Insurance Department of Workforce Development

Origin: Chapter 20, Laws of Special Session 1931

Hearing Staff FY 1998-99

Staff Type	Full-time <u>Equivalent</u>
Hearing officers	28.0
Support staff	28.9
Administrative and supervisory	2.4
Total	59.3

^{*} Estimated

Types of Cases Addressed:

- Unemployment insurance benefits
- Unemployment insurance tax status
- Petroleum Environmental Cleanup Fund Award (PECFA) program
- Plumbing and other credentials
- Wisconsin Fund—Private Sewage
- Miscellaneous Department of Commerce cases

Location of Hearings: Statewide

Average Time Period for Hearings*

FY 1998-99

Request for hearing to date of hearing	24.6 days
Length of hearing	38.0 minutes
Completion of hearing to issuance of decision	6.5 days
Request for hearing to issuance of decision	32.2 days

^{*} Includes only unemployment insurance benefit cases.

Caseload Trends

The number of new cases opened in FY 1998-99 remained essentially stable when compared to FY 1994-95, increasing by 0.7 percent. The number of new cases peaked in FY 1996-97, before falling back in FY 1998-99 to approximately the same level as in FY 1994-95. Similarly, the number of hearings held, cases withdrawn, and cases resolved all peaked in FY 1996-97.

Caseload TrendsFY 1994-95 through FY 1998-99

	FY 1994-95	FY 1995-96	FY 1996-97*	FY 1997-98	FY 1998-99*	Percentage Change
Cases Opened	18,486	19,650	19,795	19,027	18,612	0.7%
Hearings Held**	12,061	12,489	13,006	12,397	12,437	3.1
Cases Withdrawn or Settled***	6,413	6,705	7,069	6,767	6,434	0.3
Cases Resolved	18,474	19,194	20,075	19,164	18,871	2.1

^{*} Data for July 1996, January 1999, and February 1999 were estimated.

Assessment of Hearing Officer Performance

We identified 13 quantifiable performance standards for hearings in the Division of Unemployment Insurance. Of these, the nine standards shown in the following table relate directly to the performance of hearing officers. Of the remaining four standards, all are related to the timely scheduling of hearings, which is not under the direct control of hearing officers.

^{**} Number of decisions issued

^{***} Unemployment insurance benefits cases cannot result in settlement.

Standards Applicable to Hearing Officer Performance FY 1998-99

Standard	Source of Standard	Agency Performance
Eighty percent of unemployment insurance benefits hearing decisions must achieve quality scores of at least 80 percent.*	20 CFR 650.3	98.8 percent
Eighty percent of unemployment insurance benefits hearing decisions must be issued within 45 days of the appeal.*	20 CFR 650.3	93.1 percent
Sixty percent of unemployment insurance benefits hearing decisions must be issued within 30 days of the appeal.*	20 CFR 650.3	79.4 percent
PECFA cases: issue proposed decisions within 60 days after close of the hearing process.	Interagency Agreement	Not measured
Plumbing credential cases: issue proposed decisions within 14 days after the hearing.	Interagency Agreement	Not measured
Wisconsin Fund—Private Sewage cases: issue proposed decisions within 30 days after close of the hearing process.	Interagency Agreement	Not measured
Miscellaneous Department of Commerce cases: issue proposed decisions within 30 days after close of the hearing process.	Interagency Agreement	Not measured
For hearings lasting 30 minutes or less, complete decision summaries within 20 days after the appeal petition is filed with the Labor and Industry Review Commission.	Interna1	15.0 days
Unemployment Insurance tax status cases: issue decisions within 90 days after close of the hearing process.	Internal	30.5 days

^{*} The measurement period for the federal standards is April 1, 1998, to March 31, 1999.

If the Division of Unemployment Insurance does not satisfy federal timeliness or quality standards, the federal Department of Labor requires it to complete a corrective action plan outlining the steps that will be taken to ensure that the standards are met. The Division was required to prepare such plans in federal fiscal years 1994, 1996, and 1997. Because hearing officers are state employes, failure to meet performance standards could affect pay increases or result in discussions between the hearing officer and his or her supervisor on ways to improve performance or placement in the Performance Evaluation Program.

The Division monitors case and hearing officer activity through the use of an automated tracking system put in place to track compliance with federal unemployment insurance laws. The system produces numerous weekly and monthly reports that monitor, for example, when a hearing application is filed, the number of hearings scheduled and held, and decision deadlines. The review of hearing officer performance appears to be closely tied to quantifiable performance standards. Division officials indicated that they pay close attention to the federal standards during annual performance evaluations of hearing officers. For example, supervisors randomly review hearing officer decisions for both timeliness and quality using the same forms and procedures as federal evaluators.

Worker's Compensation Division Department of Workforce Development

Origin: Chapter 50, Laws of 1911

Hearing Staff FY 1998-99

Staff Type	Full-time <u>Equivalent</u>
Hearing officers	20.6
Support staff	21.6
Administrative and supervisory	3.4
Total	45.6

^{*} Estimated

Types of Cases Addressed:

- Worker's compensation benefits
- Department of Employe Trust Funds duty disability and death benefits

Location of Hearings: Statewide

Average Time Period for Hearings

FY 1998-99

Request for hearing to date of hearing*	276.0 days
Length of hearing	2.45 hours
Completion of hearing to issuance of decision	52.0 days
Request for hearing to issuance of decision*	331.0 days

^{*} Measured from the date a hearing application is deemed ready for hearing, which is the date when the application is filed and all required medical documentation has been submitted.

Caseload Trends

From FY 1994-95 through FY 1998-99, the number of new cases opened increased by 4.1 percent, but the number of hearings held decreased 14.7 percent. DWD officials indicate that the use of alternative dispute resolution, namely the emphasis on settlements, is the primary reason more cases are being resolved without hearings.

Caseload Trends* FY 1994-95 through FY 1998-99

	<u>FY 1994-95</u>	FY 1995-96	FY 1996-97	FY 1997-98	FY 1998-99	Percentage Change
Cases Opened	6,854	6,716	6,617	6,935	7,133	4.1%
Hearings Held	1,449	1,451	1,400	1,240	1,236	-14.7
Cases Withdrawn or Settled Cases Resolved	7,584 9,033	7,523 8,974	7,499 8,899	7,616 8,856	7,942 9,178	4.7 1.6

^{*} Estimated

Assessment of Hearing Officer Performance

We identified three quantifiable performance standards for the Division of Worker's Compensation. Of these, the standards shown in the following table relate directly to the performance of hearing officers. The other standard applies to scheduling hearings, an activity that is not under the direct control of the hearing officer.

Standards Applicable to Hearing Officer Performance FY 1998-99

Source of Standard Source of Standard Performance

s. 102.18(1)(b), Wis. Stats.

Prepare case summaries for appeals to the Labor and Industry Review Commission within 30 days after the appeal petition is filed.

Internal Not measured

Individual hearing officers not meeting the 90-day statutory requirement may be subject to verbal or written reprimands. However, we found that performance evaluations that would employ these standards have not been conducted for hearing officers in the Worker's Compensation Division since the end of FY 1997-98. Division staff indicated that lack of performance data, in part, prevented the evaluations from being conducted.

Division of Vocational Rehabilitation Department of Workforce Development

Origin: 1983 Wisconsin Act 435

Hearing Staff FY 1998-99

Staff Type	Full-time <u>Equivalent</u> *
Hearing officer	0.00**
Support staff	0.15
Administrative and supervisory	<u>0.05</u>
Total	0.20

^{*} Estimated

Types of Cases Addressed:

- Eligibility for vocational rehabilitation services
- Selection of service providers
- Reimbursement for services
- Quality and delivery of services

Location of Hearings: Statewide

Average Time Period for Hearings* FY 1998-99

Request for hearing to date of hearing	31.0 days
Length of hearing	2.5 hours
Completion of hearing to issuance of decision	19.0 days
Request for hearing to issuance of decision	63.0 days

^{*} Estimated

^{**} Time records for contracted hearing officers are not kept because billing is not based upon hours worked.

Caseload Trends

Over the past five years, the number of new cases opened has ranged from 11 to 20 annually. Both caseload and number of cases resolved appear to have fallen dramatically when FY 1998-99 is compared with FY 1994-95. However, the number of cases overall is small and there are significant year-to-year fluctuations, making meaningful comparisons difficult.

Caseload Trends FY 1994-95 through FY 1998-99

	FY 1994-95	FY 1995-96	FY 1996-97	FY 1997-98	FY 1998-99	Percentage <u>Change</u>
Cases Opened	19	11	19	20	11	-42.1%
Hearings Held	9	4	5	3	2	-77.8
Cases Withdrawn or Settled	10	7	14	17	9	-10.0
Cases Resolved	19	11	19	20	11	-42.1

Assessment of Hearing Officer Performance

We identified three standards relating to hearing officer performance. DWD 75, Wis. Adm. Code, sets timeliness standards for holding hearings, completion of written decisions after hearings, and issuance of written responses to hearing motions. All of these activities are under the direct control of the hearing officers.

Standards Applicable to Hearing Officer Performance FY 1998-99

Standard	Source of Standard	Agency Performance
Issue decisions within 30 days after the hearing.	DWD 75.17, Wis. Adm. Code	19.0 days
Hold hearings within 45 days after the hearing request.	DWD 75.07, Wis. Adm. Code	31.0 days
Respond to written motions by parties within 10 days after the motion.	DWD 75.17, Wis. Adm. Code	Not measured

The Division of Vocational Rehabilitation does not regularly track how long it takes to complete hearings and issue decisions, and data regarding the three standards were collected by the Division's staff upon request of the audit team. However, annual caseload reports are sent to the federal Department of Education at the end of every federal fiscal year, indicating that the Division does maintain minimal oversight of the hearing officers. Because of low annual caseloads, DWD staff consider the program to be of low priority and believe that current federal reporting requirements provide adequate oversight.

Before FY 1998-99, all decisions issued by hearing officers after a formal hearing were either approved, amended, or reversed by the Division Administrator. This practice was halted after a change in federal law. Under the amended federal law, parties to a hearing, including the Division's staff, cannot review hearing officer decisions. DWD staff indicated that in prior years, the Division Administrator reversed approximately 16 percent of hearing officer decisions. DWD officials considered re-establishing an administrative review process in the Office of the Secretary; however, no action has been taken regarding this option. Therefore, parties of interest who wish to appeal a hearing officer decision must direct their appeals to circuit court.

DOA'S DIVISION OF HEARINGS AND APPEALS

The Division of Hearings and Appeals is attached to DOA for administrative purposes. The Division resolves disputes on a variety of issues for a number of state agencies. It consists of three units: Corrections, General Government, and Work and Family Services. In FY 1998-99, the Division Administrator and three supervisors oversaw 24.9 FTE hearing officers and 25.9 FTE support staff who performed clerical, scheduling, and transcription duties. In FY 1998-99, expenditures for the Division totaled \$3.6 million, of which 55.8 percent was general purpose revenue and the remaining 44.2 percent was program revenue.

The Corrections Unit handles cases dealing with revocation of adult probation and parole, as well as juvenile aftercare. The General Government Unit handles a wide variety of cases, including those related to the environment, transportation, burial sites, special education, crime victims, and nursing home forfeitures. The Work and Family Services Unit handles a wide variety of social services cases, including those related to W-2; entitlement benefits; sanctions; Medical Assistance; energy assistance; and licensing and regulations associated with hospitals, community-based residential facilities, and nurse aides.

The Division has a number of review procedures in place. For example, many cases are reviewed by a supervisor for quality and timeliness before decisions are issued. In January 1999, the Division completed implementation of a new computer software system that provides the ability to track several timeliness standards and notify supervisors when cases exceed timeliness standards. The system also allows hearing officers to work more closely with support staff in the process of scheduling, sending notices, and issuing final orders. Hearing officers are evaluated annually on a number of quality and timeliness standards.

Division of Hearings and Appeals Hearing Expenditures by Funding Source* FY 1998-99 and FY 1999-2000

Funding Source	FY 1998-99 Expenditures	FY 1999-2000 <u>Budget</u>
General purpose revenue Program revenue	\$2,021,846 	\$2,017,500 1,923,500
Total	\$3,624,691	\$3,941,000

^{*} Estimated

Origin: A precursor to the Division was created in 1978. Since 1983, when its current structure was established, the Division's hearing authority has been expanded through legislation and agreements with other state agencies.

Corrections Unit Division of Hearings and Appeals

Hearing Staff FY 1998-99

Staff Type	Full-time <u>Equivalent</u> *
Hearing officers Support staff Administrative and supervisory	8.7 10.0 <u>1.9</u>
Total	20.6

^{*} Estimated

Types of Cases Addressed:

- Adult probation revocation
- Adult parole revocation
- Juvenile aftercare revocation

Location of Hearings: Statewide

Average Time Period for Hearings

FY 1998-99

Request for hearing to date of hearing*	39.2 days
Length of hearing	Not measured
Completion of hearing to issuance of decision	9.3 days
Request for hearing to issuance of decision**	48.5 days

^{*} Estimate based on data for 1998 and 1999 (through November)

^{**} Arrest to issuance of order

Caseload Trends

Since FY 1995-96, the number of new cases opened has increased by 15.0 percent. However, the number of cases resolved has not increased as quickly, which may indicate that a backlog is developing. Nevertheless, there was a 39.7 percent increase in the number of hearings held, and because cases that go to hearing take more time than those that are settled, it appears likely that the workload of hearing officers has increased over this period.

Caseload Trends			
FY 1995-96 through FY 1998-99			

	FY 1995-96	FY 1996-97	FY 1997-98	FY 1998-99	Percentage Change
Cases Opened	5,547	5,466	5,835	6,382	15.0%
Hearings Held	1,530	1,633	1,861	2,138	39.7
Cases Withdrawn or Settled	3,993	3,754	3,816	4,019	0.6
Cases Resolved	5,523	5,387	5,677	6,157	11.5

Assessment of Hearing Officer Performance

We identified seven quantifiable performance standards for the Corrections Unit. Of these, three standards relate to the performance of hearing officers, as shown in the following table. The unit also has three timeliness standards for support staff related to the scheduling of hearings. Finally, one standard, a ten-day time limit to mail completed decisions, relates to the combined performance of hearing officers and support staff.

Standards Applicable to Hearing Officer Performance FY 1998-99

Standard	Source of Standard	Agency Performance
Submit dictations of decisions within seven days after close of the hearing process.	Internal	Not measured
Respond to correspondence within one week.	Internal	Not measured
Respond to sentence credit requests within one week.	Internal	Not measured

The Division of Hearings and Appeals has several procedures in place that allow for review of hearing officer decisions in the Corrections Unit. The unit supervisor examines data on the timeliness of all cases. If a problem is identified, the supervisor contacts the hearing officer for an explanation. Division officials indicate that delays are typically caused by the parties and not by a lack of attention on the part of the hearing officer, because both the Department of Corrections and defendants frequently request that hearings be rescheduled. Additionally, because a second administrative review is requested for approximately half of all unit hearing officer decisions, the Division Administrator and Corrections Unit Supervisor review most of the decisions before they are issued.

Like the Division's other two units, the Corrections Unit does not consider its standards to be mandatory because, according to DOA staff, the courts have ruled that some division standards are directive in nature. In addition, there are no consequences to the agency specified in statute or administrative code if the standards are not met. However, as with all state employes, poor performance on the part of individual hearing officers may result in the failure to receive pay increases and, in extreme cases, termination.

General Government Unit Division of Hearings and Appeals

Hearing Staff FY 1998-99

Staff Type	Full-time <u>Equivalent</u> *
Hearing officers	2.5
Support staff Administrative and supervisory	1.5 <u>0.7</u>
Total	4.7

^{*} Estimated

Types of Cases Addressed:

- Transportation issues, including disputes related to automobile dealer bonds, road signs, care of state roads located within municipalities, roadway closings, and automobile dealer franchises
- Crime victim fund claims
- Nursing home forfeitures and statements of deficiency
- Environmental issues, including regulation and zoning of state waters, discharge permits, landfill permits, harvesting permits, and structures on state waters or property
- Right to disturb burial plots
- Special education, involving disputes over Individualized Education Plans and services provided by school districts

Location of Hearings: Statewide

Average Time Period for Hearings

January 1, 1999 through June 30, 1999

Request for hearing to date of hearing

Length of hearing

Completion of hearing to issuance of decision

Request for hearing to issuance of decision

Not measured

25.8 days*

Not measured

Not measured

Caseload Information

Caseload trend data from the General Government Unit are not available because of a January 1999 change in software. The caseload management system was unable to provide the number of cases withdrawn or settled, as opposed to those resolved through hearings.

Caseload Information

FY 1998-99

	FY 1998-99
Cases Opened	320
Hearings Held	207*
Cases Withdrawn or Settled	Not measured
Cases Resolved	450

Assessment of Hearing Officer Performance

There were ten quantifiable performance standards for the General Government Unit. Of these, seven standards, shown in the table that follows, relate directly to the performance of hearing officers, and three relate to activities involving both staff from other departments and unit hearing officers. In all three cases, the timeliness standards begin with an action that is not controlled by the hearing officer.

^{*} Excludes special education cases

^{*} Estimated

Standards Applicable to Hearing Officer Performance

January 1, 1999 through June 30, 1999

Source of Standard	Agency Performance
Internal	25.8 days
Internal	51.5 days
Internal	Not measured
Internal	No hearings
	Standard Internal Internal Internal Internal Internal Internal

The General Governmental Unit's supervisor reviews all decisions before they are sent to the referring agency. This allows the supervisor to monitor both quality and timeliness of decisions. The Unit's computer system is designed to inform the supervisor if any decision is late.

Work and Family Services Unit Division of Hearings and Appeals

Hearing Staff FY 1998-99

Staff Type	Full-time <u>Equivalent</u> *
Hearing officers Support staff Administrative and supervisory	13.7 9.8 2.0
Total	25.5

^{*} Estimated

Types of Cases Addressed:

- Fair Hearings, including public assistance benefit programs such as the Food Stamps program, Medical Assistance, W-2, Low-Income Energy Assistance, adoption assistance, Community Options Program, caretaker supplement, foster home, family support, Kinship Care, and refugee assistance
- Miscellaneous litigation, including licensing and regulation of nonprofit social services organizations such as Medical Assistance providers, community-based residential facilities, hospitals, and day care centers, and individual licenses including nurse aide registry and care giver registry

Location of Hearings: Statewide

Average Time Period for Hearings

FY 1998-99

Request for hearing to date of hearing

Length of hearing

Completion of hearing to issuance of decision

Request for hearing to issuance of decision

Not measured

18.3 days*

Not measured

^{*} Includes Fair Hearing cases only and does not include miscellaneous litigation hearings.

The caseload for the Work and Family Service Unit has decreased from FY 1996-1997 through FY 1998-1999. The decline is due in large part to the elimination of the Aid to Families with Dependent Children (AFDC) program and the subsequent decrease in AFDC hearings. The creation of the W-2 program has not resulted in a comparable number of W-2 hearings.

Caseload Trends FY 1996-97 through FY 1998-99

	FY 1996-97	FY 1997-98	FY 1998-99	Percentage <u>Change</u>
Cases Opened	10,079	6,284	5,011	-50.3%
Hearings Held	4,492	3,128	2,597	-42.2
Cases Withdrawn or Settled	6,015	3,638	2,553	-57.5
Cases Resolved	10,507	6,766	5,150	-51.0

Assessment of Hearing Officer Performance

We identified 19 quantifiable performance standards for the Work and Family Services Unit. Of these, 15 standards relate directly to the timeliness of hearing officers, while 4 relate to the timeliness of hearing-related activities involving staff from other departments in addition to division hearing officer activities. In three of these four standards, the timeliness requirement not only applies to scheduling a hearing and issuing a decision, it also involves the Department of Health and Family Services implementing that hearing officer decision. The remaining timeliness standard pertains to actions not controlled by the hearing officer.

Standards Applicable to Hearing Officer Performance FY 1998-99

Standard	Source of Standard	Agency Performance
Miscellaneous litigation, day care suspension cases: schedule hearings within 10 days after receipt of the case.	HFS 46.12(10)(b), Wis. Adm. Code	7.6 days
Miscellaneous litigation, Women, Infants and Children (WIC) cases: issue decisions within 60 days after receipt of the case.	HFS 149.08(3)(b), Wis. Adm. Code	114.4 days
Fair Hearing cases: issue decisions within 120 days after receipt of the case.	Internal	Ranges from 65.0 to 115.7 days
Miscellaneous litigation, tax intercept cases for the AFDC, Food Stamp, and Medical Assistance programs: issue decisions within 120 days after receipt of the case.	Internal	84.8 days
Miscellaneous litigation, care giver registry cases: issue decisions within 120 days after receipt of the case.	Internal	135.7 days
Miscellaneous litigation, involuntary discharge cases: issue decisions within 90 days after receipt of the case.	Internal	206.2 days
Other miscellaneous litigation cases: issue decisions within statutory requirement or 30 days if no statutory requirement exists.	Internal	Not measured*
Fair Hearing cases: schedule hearings within 105 days after receipt of the case.	Internal	Not measured
Miscellaneous litigation cases: contact parties within 30 days after the case assignment.	Internal	Not measured
Miscellaneous litigation cases: schedule hearings within 60 days after the case assignment.	Internal	Not measured
Miscellaneous litigation, Food Stamps intentional program violation cases: schedule hearings within 75 days after receipt of the case.	Internal	Not measured
Miscellaneous litigation, tax intercept cases for AFDC, Food Stamps, and Medical Assistance programs: schedule hearings within 105 days after receipt of the case.	Internal	Not measured
Miscellaneous litigation, WIC cases: schedule hearings within 30 days after receipt of the case.	Internal	Not measured
Respond to all correspondence within one week.	Internal	Not measured

^{*} Can be measured with new computer system, but data are not yet available.

Under standards for cases involving the Food Stamps program, Medical Assistance, and AFDC set out by a federal court decision in *Moua v. Whitburn*, a decision must be issued by a department hearing officer and implemented by the relevant departments within 90 days. If these timeliness standards are not met, the Division could be fined a maximum of \$500 per case. If a hearing officer does not meet the standards, the supervisor addresses the issue, often in the annual evaluation. As with all state employes, a hearing officer who does not improve could face loss of pay increases and, in extreme cases, termination.

The supervisor of the Work and Family Services Unit reviews all decisions before they are sent to the relevant agency. This allows the supervisor to monitor both the quality and the timeliness of the decisions. The supervisor reviews the dates of certain activities for timeliness. If case activities are not timely, the supervisor ensures there is documentation for any delays.

DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

The Department of Agriculture, Trade and Consumer Protection regulates agricultural and commercial activity for the protection of the public. One half-time attorney position, which is attached to the Office of the Secretary, is designated as the Department's hearing officer. The Department employs 0.5 FTE hearing officers and 0.2 FTE support staff to conduct hearings. Estimated FY 1998-99 hearing-related expenditures totaled \$78,152, which was funded with general purpose revenue.

The Department resolves disputes between the State and regulated parties regarding 24 separate case types relating to milk and food safety; general business practices; animal health regulations; and environmental actions concerning agriculture, such as fertilizer and pesticide spills.

The Department reports that no quantifiable performance standards are used to assess the hearing officer during annual performance evaluations by the Department Secretary. Although the hearing officer has established an informal timeliness standard to complete proposed hearing decision drafts within 60 days of hearings, data are not tracked to assess this standard.

Department of Agriculture, Trade and Consumer Protection Hearing Expenditures by Funding Source*

FY 1998-99 and FY 1999-2000

	FY 1998-99	FY 1999-2000
<u>Funding Source</u>	Expenditures	<u>Budget</u>
General purpose revenue	\$78,152	\$80,599

^{*} Estimated

Origin: Chapter 85, 1939 Laws of Wisconsin

Hearing Staff FY 1998–99

Staff Type	Full-time <u>Equivalent</u> *
Hearing officer	0.50
Support staff	0.20
Administrative and supervisory	0.02
Total	0.72

^{*} Estimated

Types of Cases Addressed:

- Milk producer regulations
- Retail food sales regulations
- Unfair trade practices, such as false advertising
- Trade weights and measures regulations
- Fertilizer and pesticide application licensing
- Fertilizer and pesticide spill remediation orders
- Livestock transportation regulations

Location of Hearings: Statewide

Average Time Period for Hearings* FY 1998-99

Request for hearing to date of hearing 108.0 days Length of hearing 1.0 day

Length of hearing 1.0 day
Completion of hearing to issuance of decision 132.0 days
Request for hearing to issuance of decision 333.0 days

^{*} Estimated

The number of new cases opened in FY 1998-99 was 8.3 percent lower than in FY 1994-95. Most cases are withdrawn or settled, and the total of cases resolved has remained steady from FY 1994-95 through FY 1998-99. The vast majority of cases are resolved or settled before a hearing is conducted.

Caseload TrendsFY 1994-95 through FY 1998-99

	FY 1994-95	FY 1995-96	FY 1996-97	FY 1997-98	FY 1998-99	Percentage Change
Cases Opened	132	111	92	121	121	-8.3 %
Hearings Held	8	7	7	11	7	-12.5
Cases Withdrawn or Settled	115	128	90	111	117	1.7
Cases Resolved	123	135	97	122	124	0.8

Assessment of Hearing Officer Performance

We identified only one quantifiable performance standard relating to the hearing function for this agency. This standard applied to timeliness in completing draft decisions, which is directly under the control of the hearing officer. The Department believes that it typically meets its internal standard. However, the Department did not measure progress toward meeting this standard.

Standards Applicable to Hearing Officer Performance FY 1998-99

Standard	Source of Standard	Agency Performance
Issue draft decisions within 60 days after the hearing.	Internal	Not measured

Hearing officer performance is assessed through an annual personnel evaluation conducted by the Department Secretary. All proposed decisions are reviewed by the Department's Executive Assistant, Deputy Secretary, or Secretary. Department staff stated that the Secretary takes an active role in overseeing the performance of the hearing officer and often modifies the hearing officer's decisions, typically with respect to proposed penalties.

DEPARTMENT OF EMPLOYE TRUST FUNDS

The Department of Employe Trust Funds and its five policy and advisory boards administer retirement benefits for participants in the Wisconsin Retirement System. The Department also administers other employe benefits, including health, life, income continuation, and long-term disability insurance for state and local employes; employe reimbursement accounts for state employes; and a deferred compensation program for both state and local government employes. The Department has 0.80 FTE positions supporting its hearing-related processes. In addition, the Department contracts with private attorneys for services equivalent to 0.35 FTE hearing officers. In FY 1998-99, expenditures for the hearing officers and supporting staff totaled \$82,064, which was funded with segregated revenue.

There are two types of appeals associated with the Department's cases. Most appeals concern the Department's denial of a benefit or calculation of a benefit and are made to the Employe Trust Funds Board or one of the other boards attached to the agency. Other appeals concern an employer's determination regarding participation in the Wisconsin Retirement System or category of employment.

Five related boards conduct hearings on cases that fall under their authority. For example, the Group Insurance Board hears cases regarding Wisconsin Retirement System employe health insurance benefits. The Employe Trust Funds Board reviews the contracts for hearing officers on an annual basis. Although some performance standards for hearing officers are specified in their contracts, in the past the Department has not collected data to determine whether the standards were met. Department officials indicate that legal counsel to the Employe Trust Funds Board will annually assess the quality of the hearing officer services provided, beginning with the review of the hearing officer contracts in June 2000. This assessment will be shared with the Board before the contracts are renewed.

Department of Employe Trust Funds Hearing Expenditures by Funding Source* FY 1998-99 and FY 1999-2000

FY 1998-99 FY 1999-2000 **Funding Source Expenditures** Budget Segregated revenue \$82,064 \$90,704

Origin: Chapter 96, Laws of 1981

^{*} Estimated

Hearing Staff FY 1998-99

Staff Type	Full-time <u>Equivalent</u> *
Hearing officers Support staff	0.35 <u>0.80</u>
Total	1.15**

^{*} Estimated

Types of Cases Addressed:

- Department determinations on benefit denials or calculations
- Employer determinations on participation in the Wisconsin Retirement System or category of employment

Location of Hearings: Madison

Average Time Period for Hearings*

FY 1998-99

Request for hearing to date of hearing	645.0 days
Length of hearing	4.0 hours
Completion of hearing to issuance of decision	468.0 days
Request for hearing to issuance of decision	918.0 days

^{*} Estimated

Caseload Trends

There was no clear trend in the number of new cases opened during the five-year period reviewed. The smallest number of cases opened was 77, and the largest number of cases opened was 225. There was considerable fluctuation in the number of cases resolved during this period; the largest number of cases, 177, was resolved in FY 1998-99. Unlike many other agencies', the Department's contested case procedures do not include case settlements.

^{**} Hearing officers are contract employes, not agency employes, and are not included in our overall calculation of state staff related to contested case hearings.

FY 1994-95 through FY 1998-99

	FY 1994-95	<u>FY 1995-96</u>	FY 1996-97	<u>FY 1997-98</u>	FY 1998-99	Percentage Change
Cases Opened	112	225	77	128	89	-20.5%
Hearings Held	70	41	27	34	24	-65.7
Cases Withdrawn or Settled*	37	29	72	26	153	313.5
Cases Resolved	107	70	99	60	177	65.4

^{*} The Department's cases are not resolved through settlement.

Assessment of Hearing Officer Performance

We identified six quantifiable performance standards in the hearing officers' contract for professional services, three of which relate to activities that are under the direct control of hearing officers. Of the three standards that do not apply to hearing officers, two involve the amount of time the Department Board has to act on petitions for rehearing. The other standard applies to timeliness of support staff in mailing the notice of rehearing. Staff report that they use all six standards to manage the appeals process on a case-by-case basis, but do not track performance statistics in the aggregate.

Standards Applicable to Hearing Officer Performance FY 1998-99

<u>Standard</u>	Source of Standard	Agency <u>Performance</u>
Grant or deny petitions for rehearings within 20 days after receipt of the petition.	ETF 11.14(4)(a), Wis. Admin. Code	Not measured
Complete reports of pre-hearing conferences within 30 days after the conference.	Contract	Not measured
Issue decisions within 60 days after close of the hearing process.	Contract	Not measured

The Department may choose not to renew a hearing officer's contract if he or she fails to meet performance expectations. However, officials report that no contract hearing officer has been terminated, nor has any contract not been renewed because of poor performance.

DEPARTMENT OF FINANCIAL INSTITUTIONS

The Department of Financial Institutions regulates the securities industry, banks, savings and loans, mortgage bankers, loan originators, and loan solicitors. The Department employs an estimated 0.11 FTE hearing officers and 0.02 administrative staff to conduct hearings. Like other agencies with smaller caseloads, it has no full-time hearing officers. Instead, attorneys working in the Department typically spend a small amount of time resolving a small number of contested cases. In FY 1998-99, total expenditures related to hearings amounted to an estimated \$14,905, which was funded using program revenue.

The Department holds hearings on cases that arise from regulatory actions in several financial industries, including revocation of securities broker and dealer licenses; mortgage banker, broker, or loan originator licenses; and credit unions and savings institutions charters and expansions. Hearings are conducted by three divisions—the Division of Securities, the Division of Banking, and the Division of Savings and Loan—as well as the Department's Office of Credit Unions. During the period we reviewed, most contested cases involved the suspension of individual securities broker or dealer licenses.

The Department was unable to provide aggregate information regarding hearing officer performance or standards. However, there has not been much need to prepare aggregate information on hearings prior to this audit because the Department holds few hearings, and responsibilities for conducting them are for the most part handled separately within a number of its organizational units. The Department was created in July 1996 from four independent agencies. Like divisions within the Department of Workforce Development, each unit has separate information and management systems. Department staff indicate that efforts are underway to improve coordination of computer management information systems, which may make aggregate data regarding hearing officer performance more readily available.

Department of Financial Institutions Hearing Expenditures by Funding Source* FY 1998-99 and FY 1999-2000

Funding Source Fy 1998-99 FY 1999-2000 Expenditures Budget

Segregated revenue \$14,905 \$15,203

Origin: 1995 Wisconsin Act 27

^{*} Estimated

Hearing Staff FY 1998-99

Staff Type	Full-time <u>Equivalent</u> *
Hearing officers Administrative and supervisory	0.11 <u>0.02</u>
Total	0.13

^{*} Estimated

Types of Cases Addressed:

- Division of Securities, including revocation of licenses and "cease and desist" orders against securities broker dealers and investment advisors
- Division of Banking, including denial, suspension, and revocation of licenses for professionals in the banking industry, such as mortgage bankers and brokers and loan originators
- Division of Savings Institutions, including granting of charters for savings institutions, denials of applications for branch expansions, and member complaints
- Office of Credit Unions, including granting of charters for credit unions, denials of applications for branch expansions, and member complaints

Location of Hearings: Madison

Average Length of Time for Hearings FY 1998-99

Request for hearing to date of hearing	Not measured
Length of hearing	Not measured
Completion of hearing to issuance of decision	Not measured
Request for hearing to issuance of decision	Not measured

Caseload Trends

To date, few contested cases have arisen as a result of the Department's activities. During the three years from FY 1996-97 through FY 1998-99, the Department resolved an estimated total of 14 cases, with 5 occurring in FY 1998-99. Because of the nature of the Department's regulatory responsibilities, cases that other agencies typically would refer to a hearing officer for resolution under administrative law are pursued as criminal matters by prosecutors.

Caseload Trends* FY 1994-95 through FY 1998-99

	FY 1996-97	FY 1997-98	FY 1998-99	Percentage Change
Cases Opened	4	9	9	125.0%
Hearings Held	0	0	1	-
Cases Withdrawn or Settled	3	6	4	33.0
Cases Resolved	3	6	5	66.7

^{*} Estimated

Assessment of Hearing Officer Performance

We identified three quantifiable performance standards for cases resolved by the Department, all of which were established through state statutes. Two standards apply to the Division of Securities and are related to activities under the control of the hearing officer. The third standard applies to the Office of Credit Unions and concerns the overall time period to complete a case, including action by the Credit Union Review Board. Department officials indicate that they do not have performance data for the two statutory standards, although they believe that the standards are being met.

Standards Applicable to Hearing Officer Performance FY 1998-99

<u>Standard</u>	Source of Standard	Agency Performance
Division of Securities: hearings must be held within 60 days after the hearing notice.	s. 551.61(2), Wis. Stats.	Not measured
Division of Securities: hearings must be noticed within 10 days after the hearing request.	s. 551.61(2), Wis. Stats.	Not measured

Because attorneys in the Department spend little time on contested case hearings, officials do not invest resources reviewing hearing officer performance apart from conducting annual evaluations of attorneys. Department officials indicated that while each division or office maintains records on all contested cases to assist in meeting timeliness standards, no aggregate data regarding performance are compiled. In no case do hearing officer duties account for more than 5 percent of the time of any attorney in the Department. Additionally, the Division of Savings Institutions and the Office of Credit Unions reported no contested cases during FY 1998-99, so attorneys in those units did not function as hearing officers during that year.

DEPARTMENT OF REGULATION AND LICENSING

The Department of Regulation and Licensing regulates 73 professions and 27 types of business establishments. Attached to the Department are 20 boards and 4 affiliated boards, which are responsible for determining education and experience requirements in issuing professional credentials, developing and evaluating examinations, and establishing standards for conduct. An estimated 1.4 FTE hearing officers are involved with contested case—related functions, together with 0.9 FTE hearing-related support staff. In FY 1998-99, total expenditures related to hearings amounted to \$188,410 and were entirely funded by program revenue.

The Department and boards hold four general types of hearings. These hearings concern unprofessional conduct, the denial of license applications, practice without credentials, and the emergency suspension of credentials. The Department issues professional credentials to approximately 280,000 individuals biannually and receives approximately 4,000 complaints over this same period. Examples of regulated professions and industries include physicians, real estate agents, manicurists, architects, social workers, auctioneers, funeral directors, chiropractors, and acupuncturists.

Like attorneys in agencies such as the Department of Financial Institutions, attorneys in the Department of Regulation and Licensing serve as hearing officers as one component of their duties. They are evaluated on an annual basis. Evaluations include a comparison of the individual's performance to case management productivity standards. In addition, monthly case status reports that highlight cases approaching or exceeding the Department's timeliness standards are distributed to managers, hearing officers, and boards. In 1999, the Department adopted a timeliness policy for enforcement proceedings, including the hearing stage; it applies to new cases opened on or after February 1, 1999. However, case management productivity standards have been in place since 1988.

Department of Regulation and Licensing Hearing Expenditures by Funding Source* FY 1998-99 and FY 1999-2000

Funding Source	FY 1998-99 Expenditures	FY 1999-2000 <u>Budget</u>	
Program revenue	\$188,410	\$210,654	

^{*} Estimated

Origin: Chapter 418, Laws of 1977

Hearing Staff FY 1998-99

Staff Type	Full-time <u>Equivalent</u> *
Hearing officers Support staff Administrative and supervisory	1.4 0.8 <u>0.1</u>
Total	2.3

^{*} Estimated

Types of Cases Addressed:

- Disciplinary proceedings
- License application denial reviews
- Administrative injunctions
- Summary credential suspensions

Location of Hearings: Madison

Average Time Period for Hearings*

FY 1998-99

Request for hearing to date of hearing	87.0 days
Length of hearing	84.0 minutes**
Completion of hearing to issuance of decision***	32.0 days
Request for hearing to issuance of decision***	157.0 days

^{*} Estimated

^{**} Four-year average from 1994 through 1997 *** Days to proposed decision

While the Department receives approximately 2,000 complaints every year, relatively few result in formal complaints that are heard before hearing officers as contested cases. Since FY 1994-95, the number of hearings requests fell by 28.6 percent. The number of hearings held and cases withdrawn or settled has also decreased over this period. However, the numbers fluctuated significantly over five years, with the highest level of case activity occurring in FY 1997-98.

Caseload Trends FY 1994-95 through FY 1998-99

	FY 1994-95	FY 1995-96	FY 1996-97	FY 1997-98	FY 1998-99	Percentage Change
Cases Opened	112	104	67	136	80	-28.6%
Hearings Held	58	54	27	100	38	-34.5
Cases Withdrawn or Settled*	26	34	23	34	25	-3.8
Cases Resolved	84	88	50	134	63	-25.0

^{*} Cases dismissed or settled

Assessment of Hearing Officer Performance

We identified three quantifiable performance standards for the Department. All three applied to hearing activities that were under the direct control of hearing officers.

Standards Applicable to Hearing Officer Performance FY 1998-99

Standard	Source of Standard	Agency Performance
Pre-hearing conferences must be held within 35 days after receipt of the case.	Internal	36.0 days
Issue scheduling orders within 49 days after receipt of the case.	Internal	37.0 days
Issue proposed decisions within 42 days after the hearing.	Internal	32.0 days

The Department uses quantifiable performance standards as part of its oversight of hearing officers. The standards are used in the annual evaluations of hearing officers and are given weight in awarding pay increases. In addition, monthly case status reports highlight the cases requiring attention. The reports are distributed to agency management, hearing officers, and oversight boards.

Hearing officer performance related to enforcement cases filed after February 1, 1999, will be measured under new timeliness standards adopted in January 1999. The new standards distinguish between simple and complex cases. Simple cases are expected to be completed within 90 days, and complex cases are expected to be completed within 180 days.

DEPARTMENT OF REVENUE

The Department of Revenue enforces state tax laws, forecasts state economic activity and state revenues, determines the equalized value of taxable property, assesses manufacturing property, and administers the Wisconsin Lottery. The Department employs an estimated 0.6 FTE hearing officers, together with a total of 0.3 FTE support staff who prepare documents for hearings and are responsible for scheduling. In FY 1998-99 total expenditures related to hearings amounted to an estimated \$30,206, of which 56.9 percent was funded with program revenue and 43.1 percent was funded with general purpose revenue.

Contested cases resolved by the Department involve appeals by property taxpayers regarding the assessed value of their property. Under s. 70.85, Wis. Stats., the Department reviews individual property tax assessments. Under s. 70.75, Wis. Stats., the Department receives appeals from groups of landowners who request a general review of local government assessment procedures. Both review processes rely on the Department's property assessment experts, rather than attorneys, to act as hearing officers.

Department of Revenue Hearing Expenditures by Funding Source* FY 1998-99 and FY 1999-2000

	FY 1998-99	FY 1999-2000
Funding Source	Expenditures	<u>Budget</u>
Program revenue	\$17,185	\$15,640
General purpose revenue	13,021	13,480
Total	\$30,206	\$29,120

^{*} Estimated

Origin: Chapter 22, 1859 Laws of Wisconsin (individual property tax assessment appeals); Chapter 259, 1905 Laws of Wisconsin (group assessment procedure appeals)

Hearing Staff FY 1998-99

Staff Type	Full-time <u>Equivalent</u> *
Hearing officer Support staff	0.6 <u>0.3</u>
Total	0.9

^{*} Estimated

Types of Cases Addressed:

- Individual property tax assessments
- Local government property tax assessment procedures

Location of Hearings: Statewide

Average Time Period for Hearings*

FY 1998-99

Request for hearing to date of hearing Not measured

Length of hearing 45.0 minutes for individual assessment appeals

Not measured

2.0 hours for group assessment appeals

Completion of hearing to issuance of decision

Request for hearing to issuance of decision Not measured

^{*} Estimated

Over the past five years, both the number of new cases opened and hearings held by the Department decreased by more than 50 percent. Department staff do not know why this has occurred. All cases opened are resolved within the same fiscal year.

Caseload Trends FY 1994-95 through FY 1998-99						
	FY 1994-95	FY 1995-96	FY 1996-97	FY 1997-98	FY 1998-99	Percentage <u>Change</u>
Cases Opened	177	157	136	89	87	-50.8%
Hearings Held	145	121	107	74	65	-55.2
Cases Withdrawn or Settled	32	37	29	15	22	-31.2
Cases Resolved	177	158	136	89	87	-50.8

Assessment of Hearing Officer Performance

We identified one quantifiable performance standard for the Department. Under s. 70.85(4)(b)(3), Wis. Stats., the Department is required to complete the review of all individual assessment appeals by November 1 of the year in which the assessment was made or within 60 days of the request, whichever is later. Although the Department does not regularly track how long it takes to complete contested cases, officials asserted that they always meet the statutory standard.

Standards Applicable to Hearing Officer FY 1998-99	Performance	
Standard	Source of Standard	Agency <u>Performance</u>
Individual property tax payer appeals: orders must be made prior to November 1, or within 60 days after the hearing request.	s. 70.85(4)(b)(3), Wis. Stats.	Not measured

While quantifiable performance data are not used to evaluate the performance of hearing officers in the Department, there are procedures in place for review of decisions. In addition, decisions can be appealed to circuit court in the case of s. 70.85 hearings. Department officials indicated that all hearing officer decisions are reviewed and signed by the Director of the Bureau of Equalization before being issued.

DEPARTMENT OF TRANSPORTATION

The Department of Transportation is responsible for planning, protecting, and promoting the State's highways, motor vehicles, motor carriers, railways, aeronautics, and mass transit systems. Within the Division of Motor Vehicles, 3.6 FTE hearing officers conduct hearings in the Bureau of Field Services and Bureau of Driver Services, supported by a total of 6.0 FTE administrative and support staff who perform clerical, scheduling, and supervisory duties. In FY 1998-99, hearing-related expenditures totaled \$464,927, which was entirely funded with general purpose revenue.

Staff in the Bureau of Field Services hold hearings on administrative suspension of driver licenses for persons charged with operating a motor vehicle while intoxicated (OWI). Hearings are conducted by 37 staff, who are not attorneys, working at Division of Motor Vehicles service centers throughout the State. Thirty-six of these staff, representing 0.6 FTE positions, conduct hearings as a small portion of their duties. One hearing officer holds hearings on OWI cases in Madison, Waukesha, and Milwaukee on a full-time basis. Additionally, the Bureau of Driver Services resolves disputes between the Department and persons who owe damages for owning and operating uninsured motor vehicles that are involved in accidents.

The Department has timeliness standards in place for OWI contested cases, including a statutory requirement that cases be resolved within 30 days. However, staff do not collect data measuring progress toward meeting the standards. In addition, there are no timeliness standards for the processing of uninsured motorist hearings.

Department of Transportation Hearing Expenditures by Funding Source* FY 1998-99 and FY 1999-2000

Funding Source Fy 1998-99 FY 1999-2000 Expenditures Budget

General purpose revenue \$464,927 \$474,152

* Estimated

Bureau of Driver Services Department of Transportation

Origin: 1993 Wisconsin Act 16

Hearing Staff FY 1998-99

Staff Type	Full-time <u>Equivalent</u>
Hearing officers	2.0
Support staff Administrative and supervisory	1.0 <u>0.3</u>
Total	3.3

^{*} Estimated

Types of Cases Addressed:

• Uninsured motorist accidents

Location of Hearings: Madison, Milwaukee, Eau Claire, Fond Du Lac, Green Bay, Onalaska, Wausau, and Spooner

Average Time Period for Hearings

FY 1998–99

Request for hearing to date of hearing	Not measured
Length of hearing	Not measured
Completion of hearing to issuance of decision	Not measured
Request for hearing to issuance of decision	Not measured

The caseload for the Bureau of Drivers Services has fallen during the past three fiscal years. The number of new cases opened has steadily decreased in the most recent three-year period, falling 16.0 percent from FY 1996-97 through FY 1998-99. Similarly, the number of cases resolved fell from 1,181 in FY 1996-97 to 1,052 in FY 1998-99, or 10.9 percent.

Caseload Trends* FY 1996-97 through FY 1998-99

	FY 1996-97	FY 1997-98	FY 1998-99	Percentage Change
Cases Opened	1,327	1,151	1,115	-16.0%
Hearings Held	921	820	836	-9.2
Cases Withdrawn or Settled	260	196	216	-16.9
Cases Resolved	1,181	1,016	1,052	-10.9

^{*} Estimated

Assessment of Hearing Officer Performance

The Bureau of Driver Services does not have quantifiable performance standards for hearing officers. Additionally, there are no formal written performance expectations regarding hearing officer productivity. The Bureau does monitor data regarding the number of pending cases, and hearing officers are expected to maintain a manageable backlog of cases. However, the number of pending cases has increased at the same time that caseloads have fallen. Department officials indicate bureau supervisory staff review each hearing decision and periodically observe hearing officer performance during hearings. In addition, hearing officer performance goals are addressed during the employe evaluation process.

Bureau of Field Services Department of Transportation

Origin: 1987 Wisconsin Act 3

Hearing Staff FY 1998-99

Staff Type	Full-time <u>Equivalent</u> *
Hearing officers	1.6
Support staff	4.0
Administrative and supervisory	<u>0.7</u>
Total	6.3

^{*} Estimated

Types of Cases Addressed:

• Administrative suspensions of driver licenses for operating motor vehicles while intoxicated (OWI)

Location of Hearings: Statewide

Average Time Period for Hearings FY 1998-99

Request for hearing to date of hearing	Not measured
Length of hearing	Not measured
Completion of hearing to issuance of decision	Not measured
Request for hearing to issuance of decision	Not measured

The caseload for the Bureau of Field Services is higher than for most divisions or bureaus. In addition, the number of new cases opened increased from FY 1994-95 through FY 1998-99. Because of inconsistencies in reporting by district offices, the Bureau of Field Services was unable to provide accurate data regarding the number of cases withdrawn or settled and cases resolved. However, staff believe that the number of hearings held represents the total of cases resolved. As shown in the following table, the number of new cases opened in FY 1998-99 was 13.3 percent higher than in FY 1994-95. The number of hearings held rose slightly, increasing from 4,315 in FY 1994-95 to 4,480 in FY 1998-99.

Caseload TrendsFY 1994-95 through FY 1998-99

	FY 1994-95	FY 1995-96	FY 1996-97	FY 1997-98	FY 1998-99	Percentage Change
Cases Opened	5,235	5,575	5,790	5,859	5,932	13.3%
Hearings Held*	4,315	4,460	4,695	4,664	4,480	3.8
Cases Withdrawn or Settled**	-	-	-	-	-	-
Cases Resolved**	-	-	-	-	-	-

^{*} Estimated

Assessment of Hearing Officer Performance

We identified three standards relating to OWI hearings at the Bureau of Field Services. One applies to activities a hearing officer has direct control over, and is based upon bureau policy. This internal standard requires hearing officers to complete the file review for each case, hold the hearing, and issue a decision within 45 minutes. The other two standards require timely action from law enforcement agencies, as well as prompt scheduling of the hearings by support staff. State statutes require that final hearing decisions be issued within 30 days from the date the OWI citation was issued.

Although the Department asserts that the standards are currently being met, it does not collect data measuring performance related to either of these two standards, even though the second standard is specified by statute.

^{**} Data not available

Standards Applicable to Hearing Officer Performance FY 1998-99

Source of Agency
Standard Standard Performance

All hearings will last no longer than 30 minutes. Internal Not measured

The Bureau of Field Services does not appear to emphasize collecting data to measure hearing officer performance in OWI hearings, because hearings are a very small portion of field staff's total responsibilities. Department staff indicated that hearings are periodically observed by a supervisor to ensure timeliness standards are met.

Adequate performance of hearing officers during OWI contested case hearings is necessary to ensure that incorrect OWI charges and driver license suspensions are overturned and that correct OWI charges and driver license suspensions are upheld. The Department estimated that it overturned 992 OWI suspensions, or 22.5 percent of OWI hearings scheduled, in calendar year 1998.

DEPARTMENT OF VETERANS AFFAIRS

The Department of Veterans Affairs provides educational and economic assistance to veterans of the United States Armed Forces and their dependents through loan and grant programs. The chief legal counsel of the Department spends an estimated 10 percent of his time, or 0.1 FTE position, acting as a hearing officer. In addition, an estimated 0.25 FTE support staff positions are assigned to aid the hearing process by scheduling hearings, helping to prepare legal documents, and maintaining case files. In FY 1998-1999, estimated expenditures to resolve contested cases, including support staff and oversight activities, totaled \$22,100 and were funded with segregated revenue.

There are approximately 13 grant and loan programs administered by the Department under state statutes and administrative code. However, according to staff in the Department, contested cases usually involve grants for educational assistance, retraining, health care, and subsistence expenses, along with housing and personal loans.

Department officials indicate that there are currently no performance standards established in statutes or by the Department to assess the hearing process. However, the Department Secretary reviews each case and issues the final decision based on the proposed decision written by the hearing officer.

Department of Veterans Affairs Hearing Expenditures by Funding Source*

FY 1998-99 and FY 1999-2000

	FY 1998-99	FY 1999-2000
Funding Source	Expenditures	<u>Budget</u>
Segregated revenue	\$22,100	\$22,175

^{*} Estimated

Origin: Chapter 580, 1945 Laws of Wisconsin

Hearing Staff FY 1998-99

Staff Type	Full-time <u>Equivalent</u> *
Hearing officer Support staff	0.10 0.25
Administrative and supervisory	<u>0.01</u>
Total	0.36

^{*} Estimated

Types of Cases Addressed:

- Tuition and educational fee grants
- Retraining grants
- Housing loans
- Personal loans
- Subsistence grants
- Health care aid grants

Location of Hearings: Madison

Average Time Period for Hearings* FY 1998-99

Request for hearing to date of hearing	33.0 days
Length of hearing	30.0 minutes
Completion of hearing to issuance of decision	40.8 days
Request for hearing to issuance of decision	74.0 days

^{*} Estimated

Since FY 1994-95, the number of new cases opened and the number of cases resolved by the Department have remained fairly stable. However, there has been a decrease over the last two years in the number of cases resolved through hearings and an increase in the number of withdrawn or settled cases.

Caseload Trends *
FY 1994-95 through FY 1998-99

	FY 1994-95	FY 1995-96	FY 1996-97	FY 1997-98	FY 1998-99	Percentage Change
Cases Opened	70	81	57	69	71	1.4%
Hearings Held	37	42	28	26	29	-21.6
Cases Withdrawn or Settled	33	39	29	43	42	27.3
Cases Resolved	70	81	57	69	71	1.4

^{*} Estimated

Assessment of Hearing Officer Performance

Officials indicate formal performance standards have not been developed to assess the quality or timeliness of hearing officer decisions because the Department deals with a small number of cases and invests a fairly small amount of time to resolve them. However, all proposed hearing officer decisions are reviewed and signed by the Department Secretary.

EMPLOYMENT RELATIONS COMMISSION

The Employment Relations Commission resolves issues related to collective bargaining and labor relations in the private and public sectors. In addition to mediating labor disputes, the Commission resolves contested cases related to labor laws and provides training and assistance to parties interested in labor and management cooperation. The Commission devotes a total of 11.7 FTE employes to activities related to contested cases, including 8.6 FTE hearing officers and 3.1 FTE administrative and supervisory staff, who are responsible for clerical, scheduling, and supervisory tasks. In FY 1998-99, the Commission spent an estimated \$1.1 million in general purpose revenue and an additional \$38,500 in program revenue to hold hearings.

The Commission conducts a range of hearing types, which can be grouped under four broad categories: representation cases, which include union election disputes, union security referenda, and unit clarifications; complaint cases, which include unfair or prohibited labor practices, "duty to bargain," interference with union activities, enforcement of arbitration awards, and discrimination due to union activity; grievance arbitration cases, which include breaches of collective bargaining agreements and interpretation of collective bargaining issues; and declaratory rulings, which are cases in which one party asks for a ruling concerning the status of a particular issue of a collective bargaining agreement.

The Commission places a strong emphasis on using measurable performance data to manage the activities of hearing officers. Each hearing officer's annual evaluation includes a statistical assessment of his or her progress in reaching agency standards. Additionally, the Commission recently completed a customer satisfaction survey of parties involved in contested cases that had been resolved by the Commission's hearing officers.

Employment Relations Commission Hearing Expenditures by Funding Source*

FY 1998-99 and FY 1999-2000

Funding Source	FY 1998-99 Expenditures	FY 1999-2000 Budget
General purpose revenue Program revenue	\$1,070,235 38,500	\$1,090,486 139,613
Total	\$1,108,735	\$1,230,099

^{*} Estimated

Origin: Chapter 57, Laws of 1939

Hearing Staff FY 1998-99

Staff Type	Full-time <u>Equivalent</u> *
Hearing officers	8.6
Support staff	1.8
Administrative and supervisory	1.3
Total	11.7

^{*} Estimated

Types of Cases Addressed:

- Representation, involving unit clarification
- Grievance arbitration, involving breaches in collective bargaining agreements
- Complaints, involving unfair or prohibited labor practices
- Declaratory rulings, involving specific aspects of collective bargaining agreements

Location of Hearings: Statewide

Average Time Period for Hearings

FY 1998-99

Request for hearing to date of hearing	Not measured
Length of hearing	Not measured
Completion of hearing to issuance of decision	Not measured
Request for hearing to issuance of decision	Not measured

Caseload Trends

Since FY 1994-95, the number of new cases opened has decreased by 32.9 percent. Data on the status of cases before implementation of an automated case management system in FY 1997-98 are not available.

Caseload Trends FY 1993-94 through FY 1998-99

	FY 1994-95	FY 1995-96	FY 1996-97	FY 1997-98	FY 1998-99	Percentage <u>Change</u>
Cases Opened	1,048	913	752	758	703	-32.9%
Hearings Held	n/a	n/a	n/a	389	354	-
Cases Withdrawn or Settled	n/a	n/a	n/a	369	349	-
Cases Resolved	n/a	n/a	n/a	758	703	-

Assessment of Hearing Officer Performance

We identified eight quantifiable performance standards for the Employment Relations Commission. Five standards, shown in the table below, relate directly to the performance of hearing officers and to the amount of time that hearing officers have to complete a decision once the hearing is complete and ready for a decision. The three remaining standards apply to prompt issuance of the final decision by the Commission, once the draft decision has been completed by the hearing officer.

Standards Applicable to Hearing Officer Performance FY 1998-99

<u>Standard</u>	Source of Standard	Agency Performance
Complaint cases: issue decisions within 60 days after close of the hearing process.	s. 111.07(4), Wis. Stats.	89.0 days*
Declaratory rulings and miscellaneous cases: issue proposed decisions within 30 days after close of the hearing process.	Internal	44.0 days
Representation for elections: issue proposed decisions within 30 days after close of the hearing process.	Internal	45.0 days*
Representation for unit clarifications: issue proposed decisions within 60 days after close of the hearing process.	Internal	54.0 days*
Grievance arbitration cases: issue decisions within 90 days after close of the hearing process.	Internal	79.0 days*

^{*} Period from May 1, 1998 to April 30, 1999

The Employment Relations Commission has developed quantifiable performance standards that are used in evaluating its employes. Hearing officers who do not meet performance standards may not receive pay increases and, in some instances, poor performance may result in disciplinary action.

Team leaders provide primary oversight of hearing officers to ensure the quality of agency decisions in contested cases and to ensure that the officers meet agency and statutory standards for timeliness. This is accomplished by monitoring the status of cases, which includes biweekly status reports.

OFFICE OF THE COMMISSIONER OF INSURANCE

The Office of the Commissioner of Insurance regulates the insurance industry in the State. The Office examines insurance industry financial practices, grants licenses to insurance agents, and investigates consumer complaints. One half-time attorney position is designated as the Office's hearing officer. This person schedules pre-hearing conferences, issues subpoenas, conducts hearings, issues protective orders to protect witnesses or trade secrets, reviews briefs, prepares proposed decisions, prepares drafts of final decisions, and reviews final decisions issued by the Commissioner of Insurance. In FY 1998-99, expenditures to resolve contested cases, including expenditures for support staff and oversight activities, totaled \$81,081, which was entirely funded with program revenue.

Contested cases resolved by the Office's hearing officer typically involve appeals of regulatory actions against insurance companies or insurance agents. The most common subject for an appeal hearing is the revocation or denial of an individual's license to sell insurance.

The Office reports that three formal performance standards have been established to assess the timeliness of the hearing officer. However, the Office does not maintain summary data related to case processing times to determine if the hearing officer is meeting these standards. Instead, staff indicate that each case is tracked on an individual basis to ensure that timeliness standards are not exceeded.

Office of the Commissioner of Insurance Hearing Expenditures by Funding Source*

FY 1998-99 and FY 1999-2000

Funding Source	FY 1998-99 Expenditures	FY 1999-2000 Budget
Program revenue	\$81,081	\$87,235

^{*} Estimated.

Origin: Chapter 371, 1975 Laws of Wisconsin

Hearing Staff FY 1998-99

Staff Type	Full-time <u>Equivalent</u> *
Hearing officer	0.50
Support staff	0.25
Administrative and supervisory	0.02
Total	0.77

^{*} Estimated

Types of Cases Addressed:

- Insurance agent practices
- Insurance company practices
- Licensing of individual insurance agents

Location of Hearings: Madison

Average Time Period for Hearings

FY 1998-99

Not measured
Not measured
Not measured
Not measured

Caseload Information

The Office does not keep records on the number of contested cases or any other workload data concerning its hearing officer. However, at our request, staff reviewed FY 1998-99 case files and provided some caseload data for the most recent fiscal year.

Caseload Information

FY 1998-99

FY 1998-99

49

Cases Opened	Not measured
Hearings Held	13
Cases Withdrawn or Settled	36

Assessment of Hearing Officer Performance

Cases Resolved

Staff reported that three quantifiable performance standards have been established relating to the timeliness of contested hearing procedures that are applicable to the performance of hearing officers. However, the Office does not collect any information to determine if these standards are met. One of the timeliness standards, which relates to the scheduling of hearings, was created by statute. Another standard, requiring that default decisions be issued within 30 days of a hearing, refers to decisions issued when an aggrieved party does not appear at a hearing.

Standards Applicable to Hearing Officer Performance FY 1998-99

Standard	Source of Standard	Agency Performance
Hearings must be scheduled within 60 days after the hearing request.	s. 601.62 (3)(a), Wis. Stats.	Not measured
Issue proposed decisions within 90 days after close of the hearing process.	Internal	Not measured
Issue default decisions within 30 days after the hearing.	Internal	Not measured

The performance of the hearing officer is assessed by an annual personnel evaluation that includes the standards listed in the above table, although none of the performance expectations are measured quantitatively. Like several other agencies, the Office provides an internal review of hearing officer decisions to ensure their quality. The Commissioner reviews nearly all proposed decisions prepared by the hearing officer and either affirms, modifies, or reverses the proposed decision.

OFFICE OF THE COMMISSIONER OF RAILROADS

The Office of the Commissioner of Railroads regulates railroad safety, particularly railroad-highway crossings. The Office responds to requests to investigate the safety of railroad crossings and also initiates such investigations. Additionally, the Office is responsible for matters related to rates and charges for water carriers, such as the Madeline Island Ferry. The Office's general counsel serves as the hearing officer, with an estimated 0.8 FTE of this position involved in conducting contested case hearings. In addition, the hearing officer function is supported by 0.4 FTE support staff who provide clerical assistance, as well as 0.02 FTE supervisory staff that represents time spent by the Commissioner to oversee the hearing officer. In FY 1998-99, the Office spent an estimated \$112,833 in program revenue to conduct hearings.

The hearing officer in this agency resolves cases that fall under two general categories. The largest group includes hearings related to railroad crossings. The other category is related to other matters related to railroads, such as drainage complaints and railroad employe safety.

Office staff indicate that while no timeliness or quality standards exist for contested cases falling under its jurisdiction, oversight of the caseload by the Commissioner takes place on a daily basis, and therefore adequate management of hearing officer performance is ensured.

Office of the Commissioner of Railroads Hearing Expenditures by Funding Source*

FY 1998-99 and FY 1999-2000

	FY 1998-99	FY 1999-2000
Funding Source	<u>Expenditures</u>	<u>Budget</u>
Program revenue	\$112,833	\$116,093

^{*} Estimated

Origin: 1993 Wisconsin Act 123

Hearing Staff FY 1998-99

Staff Type	Full-time <u>Equivalent</u> *
Hearing officer Support staff	0.80 0.40
Administrative and supervisory Total	<u>0.02</u> 1.22

^{*} Estimated

Types of Cases Addressed:

- Railroad crossing issues, including closure, alteration, relocation, establishment or repair of railroad crossings, and appropriate warning devices
- Other railroad-related issues, including drainage complaints against railroads, fencing along railroad right-of-ways, railroad employe safety, and exemptions for certain vehicles from stopping requirements

Location of Hearings: Statewide

Average Time Period for Hearings FY 1998-99

Request for hearing to date of hearing 53.0 days

Length of hearing 4.0 hours

Completion of hearing to issuance of decision 45.0 days

Request for hearing to issuance of decision 98.0 days

Caseload Trends

The Office's caseload has been essentially stable over the past five years. Because of the relatively small number of cases, small differences in caseloads can appear more significant in percentage terms than in actual numbers. Generally, the Office resolves approximately 50 cases per year, with only a handful of cases being resolved by stipulation, withdrawal, or dismissal. Most cases are resolved through the hearing process.

Caseload Trends* FY 1994-95 through FY 1998-99

	FY 1994-95	FY 1995-96	FY 1996-97	FY 1997-98	FY 1998-99	Percentage Change
Cases Opened	52	50	52	51	49	-5.8%
Hearings Held	47	46	48	48	42	-10.6
Cases Withdrawn or Settled	5	4	4	3	7	40.0
Cases Resolved	52	50	52	51	49	-5.8

^{*} Estimated

Assessment of Hearing Officer Performance

Staff reported that no performance standards exist to assess the quality or timeliness of hearing officer decisions. All proposed hearing officer decisions are reviewed and signed by the Commissioner of Railroads.

PERSONNEL COMMISSION

The Personnel Commission resolves disputes involving state employes, applicants for state employment, and state agencies, regarding appeals of personnel transactions and complaints of discrimination or retaliation. The Commission's three members are appointed by the Governor and serve as hearing officers. In addition, the Commission employs two represented staff attorneys who serve as hearing officers and perform other duties. The Commission estimates that staff related to its hearing function total 2.4 FTE hearing officers and 1.0 FTE support and administrative staff. In FY 1998-99, expenditures for the hearing officer functions totaled \$299,085, all of which was funded with general purpose revenue.

The Commission hears appeals of civil service actions, including those related to employment examinations, the classification of positions, disciplinary actions taken against employes, and appointment decisions. In addition, the Commission hears discrimination complaints against the State as an employer relating to the Fair Employment Act, occupational safety and health, retaliation under the State's "whistleblower" law, employe involvement in certain kinds of protected activities, and the Family Medical Leave Act.

The Commission tracks the timeliness of case resolution by individual hearing officers and monitors the number of cases resolved by its hearing officers annually. The Commission monitors the timeliness of each hearing officer's caseload on a biweekly basis using automated reports. However, Commissioners who serve as hearing officers are not subject to the same type of review as the Commission's two hearing officers, who are classified state employes.

Personnel Commission Hearing Expenditures by Funding Source* FY 1998-99 and FY 1999-2000

 Funding Source
 FY 1998-99
 FY 1999-2000

 Expenditures
 Budget

 General purpose revenue
 \$299,085
 \$302,253

Origin: Chapter 196, 1977 Laws of Wisconsin

^{*} Estimated

Hearing Staff FY 1998-9

Staff Type	Full-time <u>Equivalent</u> *
Hearing officer Support staff	2.4 0.6
Administrative and supervisory	0.0 <u>0.4</u>
Total	3.4

^{*} Estimated

Types of Cases Addressed:

- Wisconsin civil service appeals, including personnel transactions related to civil service
 examinations, position reclassification complaints, disciplinary actions taken against permanent
 unclassified employes, appointment decisions, non-contractual grievances, appeals of hazardous
 employment benefits decisions, and appeals concerning county merit system rules
- Discrimination issues, including the Fair Employment Act, occupational health and safety, "whistleblower" retaliation, employe involvement in certain kinds of protected activities, and the Family Medical Leave Act

Location of Hearings: Madison

Average Time Period for Hearings FY 1998-99

Request for hearing to date of hearing	197.0 days
Length of hearing	1.7 days
Completion of hearing to issuance of decision	161.7 days
Request for hearing to issuance of decision	362.4 days

Caseload Trends

Since FY 1994-95, the number of new contested cases opened has declined by 74.2 percent. In addition, the number of cases resolved declined by 77.7 percent. The largest decline occurred in the number of cases withdrawn or settled. In FY 1998-99, 82.2 percent fewer cases than in FY 1994-95 were withdrawn or settled.

Caseload TrendsFY 1994-95 through FY 1998-99

	FY 1994-95	FY 1995-96	FY 1996-97	FY 1997-98	FY 1998-99	Percentage Change
Cases Opened	1,028	253	212	272	265	-74.2%
Hearings Held	151	247	114	48	77	-49.0
Cases Withdrawn or Settled Cases Resolved	961 1,112	263 510	148 262	207 255	171 248	-82.2 -77.7
Cuses Reserved	1,112	310	202	233	210	77.7

Assessment of Hearing Officer Performance

We identified three quantifiable performance standards relating to the Commission's hearing function. Of these standards, two relate directly to the performance of hearing officers. The third standard relates to how long the Commission may take after a hearing is complete to issue a final decision, and is not within the direct control of the hearing officers.

Standards Applicable to Hearing Officer Performance FY 1998-99

Standard	Source of Standard	Agency <u>Performance</u>
Hearing officers will complete at least 61 cases per year.	Internal	66.1 cases
Issue decisions within 60 days after close of the hearing process.	Internal	39.0 days

The Commission uses performance data to measure progress in meeting its standards and includes performance goals as part of its annual evaluations of the two represented attorneys who serve as hearing officers. Officials indicate that over the past ten years, no staff attorney has failed to meet performance goals. However, the Commissioners who also serve as hearing officers are appointed officials. Consequently, the evaluation of Commissioners' performance in holding hearings is not comparable to evaluation of hearing officers who are classified state employes and are required to receive annual evaluations.

TAX APPEALS COMMISSION

The Tax Appeals Commission resolves tax disputes between persons and groups and the Department of Revenue. The Commission also hears appeals arising under the Homestead and Farmland Preservation Tax Credit programs and decides appeals of state assessments of manufacturing property and penalties for late filings. Three tax appeals Commissioners, who are appointed by the Governor, serve as hearing officers. A total of 2.75 FTE employes are devoted to conducting hearings, and a total of 2.4 FTE support and administrative staff provide clerical and supervisory functions related to hearings. In FY 1998-99, expenditures for contested case hearings totaled \$510,016 and were funded with general purpose revenue.

The Tax Appeals Commission hears 23 types of tax appeal cases. These appeals are divided into seven categories: income tax substantiation, income tax apportionment, responsible person assessments for withholding taxes from businesses, manufacturing assessments, income and sales and use tax exemptions, real estate transfer fees, and small claims.

Unlike hearing officers in other state agencies, each Commissioner is required by statute to submit an affidavit for each pay period, stating that he or she has met timeliness standards, before receiving a paycheck. However, the Commission does not routinely measure aggregate statistics regarding timeliness of case resolution. Additionally, the performance of Commissioners is not assessed using quantitative measures because each of the Commissioners is appointed to a staggered six-year term by the Governor. Consequently, the evaluation of Commissioners' performance is not comparable to evaluation of hearing officers who are classified state employes and are required to receive annual evaluations.

Tax Appeals Commission Hearing Expenditures by Funding Source* FY 1998-99 and FY 1999-2000

Funding Source Fy 1998-99 FY 1999-2000

<u>Expenditures Budget</u>

General purpose revenue \$510,016 \$459,760

Origin: Chapter 412, 1939 Laws of Wisconsin

^{*} Estimated

Hearing Staff FY 1998-99

Staff Type	Full-time <u>Equivalent</u> *
Hearing officers	2.75
Support staff	2.35
Administrative and supervisory	<u>0.05</u>
Total	5.15

^{*} Estimated

Types of Cases Addressed:

- Income tax, including substantiation or apportionment of income taxes for individuals and businesses
- Manufacturing property tax assessments
- Sales and use tax, involving determinations of county sales and use taxes
- Homestead Tax Credit determinations
- Farmland Preservation Tax Credit determinations
- Withholding, involving responsible person assessments for withholding taxes from businesses
- Real estate transfer fees
- Utility tax
- Gift tax
- Equalization, involving relative property values for local property taxes
- Motor vehicle tax
- Recycling surcharges
- Miscellaneous issues, such as cases related to treatment plant and pollution abatement equipment

Location of Hearings: Statewide

Average Time Period for Hearings* FY 1998-99

Request for hearing to date of hearing	291.9 days
Length of hearing	2.0 hours
Completion of hearing to issuance of decision	32.8 days
Request for hearing to issuance of decision	337.1 days

^{*} Estimated

Caseload Trends

Since FY 1994-95, the number of new cases opened has declined by 92.9 percent. Commission staff report that between FY 1994-95 and FY 1996-97, a class of federal retirees created an atypically high number of opened cases because of a federal circuit court decision that affected the reporting of federal retirement benefits for state income tax purposes. Most cases resolved by the Commission are withdrawn or settled.

Caseload TrendsFY 1994-95 through FY 1998-99

FY 1994-95	FY 1995-96	<u>F Y 1996-97</u>	<u>FY 1997-98</u>	FY 1998-99	Percentage Change
4,010	1,293	632	371	283	-92.9%
79	89	60	76	99	25.3
506	277	1,894	2,089	516	2.0
585	366	1954	2,165	615	5.1
	4,010 79 506	4,010 1,293 79 89 506 277	4,010 1,293 632 79 89 60 506 277 1,894	4,010 1,293 632 371 79 89 60 76 506 277 1,894 2,089	4,010 1,293 632 371 283 79 89 60 76 99 506 277 1,894 2,089 516

Assessment of Hearing Officer Performance

We identified three quantifiable performance standards relating to the Commission's hearing function. All three standards shown in the table that follows relate directly to the performance of hearing officers.

Standards Applicable to Hearing Officer Performance

FY 1994-95 through FY 1998-99

Standard	Source of Standard	Agency Performance
All cases except small claims: issue final decisions within 90 days after close of the hearing process.	s. 73.01 (4m), Wis. Stats.	79.0 days*
Small claims: provide oral decisions at the close of the hearing or issue written decisions within 14 days after the hearing.	s. 73.01(4)(dn), Wis. Stats.	9.0 days**
Initial drafts of written decisions must be circulated to other Commissioners for review 30 days prior to the decision deadline.	Internal	Not measured

^{*} Estimated

The Chair of the Commission has oversight responsibility for ensuring that standards are met. While informal quality control is done through meetings of the Commission, it does not appear that performance data are routinely measured.

^{**} For the period FY 1996-97 through FY 1998-99

APPENDIX III

RESPONSIBILITIES OF INDEPENDENT HEARING AGENCIES IN 17 OTHER STATES

(by Case Type)

<u>State</u>	Social Services	Natural Resources	<u>Agriculture</u>	Regulation and <u>Licensing</u>	Education	<u>Transportation</u>	State Retirement System	Civil <u>Rights</u>	Veterans <u>Affairs</u>	Worker's Compensation	Unemployment <u>Insurance</u>
Arizona		•	•	•	•						
California	•	•	•	•	•	•					
Georgia	•	•	•	•	•	•					
Iowa	•	•	•	•	•	•	•	•			•*
Louisiana	•	•			•						
Maryland	•	•	•	•	•	•	•	•			
Massachusetts	•	•	•	•			•	•**	•		
Michigan	•			•			•				
Minnesota	•	•				•		•	•	•	
Missouri	•	•	•	•		•					
New Jersey	•	•	•		•	•	•				
North Carolina	•	•	•		•			•			
North Dakota	•		•	•	•					•	
South Carolina	•			•							
Tennessee	•	•	•	•	•	•			•		
Texas	•	•	•	•		•	•			•	
Washington	•	•	•	•	•	•	•		•		•
TOTAL	16	14	13	13	11	10	7	5	4	3	2

^{*} For cases involving a state agency as a party ** Pilot program

Source: 1999 Survey by the Department of Administration's Division of Hearings and Appeals

APPENDIX IV



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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June 19, 2000

Janice Mueller State Auditor 22 East Mifflin Street, Suite 500 Madison, Wisconsin 53703

Re: Review of Hearing Officers in State Government

Dear Ms. Mueller:

The Division of Hearings and Appeals has completed its review of the final report of the Legislative Audit Bureau on hearing officers in state government. As I conveyed to the Bureau staff at our exit interview, I commend you on the preparation of a very good compilation of data regarding the system of hearing contested cases by state government. This is by far the most complete job of fact gathering that I have ever seen on this subject. It provides hard numbers for many subjects that we previously had to use rough estimates that were of questionable reliability.

The recommendations of the report which involve adding three new areas of responsibility to the Division of Hearings and Appeals appear to be reasonable and can be accomplished if the legislature determines that the DHA is the appropriate agency to hear and decide these cases. My only concern is that the DHA would be required to assume these additional responsibilities without adding any support resources. While some new duties could be added to the existing responsibilities of our support units, I do not think it is reasonable to include transcript preparation and court referrals. The division is already understaffed in these areas and cannot assume more caseload without unacceptable delays in meeting our statutorily required duties. Since our hearings are routinely tape recorded, we only prepare a written transcript if there is a request by the administrative law judge or the court. It would not be realistic to add more transcript and appeal record preparation to the already over-extended staff who perform this work.

I agree with your conclusion that it would not be cost effective to consolidate the two major hearing agencies--DWD and DHA. However, I continue to believe that several advantages can be achieved by the consolidation of very small hearing offices that are presently housed in the agency that generates the hearings into one of the large centralized hearing agencies. The data you assembled indicates that the higher volume agencies can process their hearings more efficiently and more expeditiously. More importantly, the placement of the responsibility to hear and decide these cases in an independent agency, makes the system fairer and certainly adds to the public perception of fairness which is critical in these controversial and sensitive cases. It is

very difficult for members of the public to understand how an agency can participate as a party to a case and then act as the decision maker in that same case. The DHA remains open to consider handling more such hearings if the legislature decides this represents the best public policy.

Thank you for the opportunity to participate in and respond to the audit report that has been prepared on the state administrative hearing function.

Sincerely,

David H. Schwarz Administrator

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APPENDIX V

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Tommy G. Thompson Governor

Linda Stewart, Ph.D. Secretary



State of Wisconsin Department of Workforce Development

June 12, 2000

Janice Meuller State Auditor Wisconsin Legislative Audit Bureau 22 E. Mifflin St., Suite 500 Madison, WI 53703

Dear Ms. Meuller:

Thank you for the opportunity to respond to the Hearing Officer Audit. We believe that the audit was conducted in a fair and impartial manner. We are in agreement with the audit report's overall findings and conclusions. I do have a number of specific comments I would like to make in response to the report.

We understand that one of the main concerns behind the audit was whether there is adequate supervision of hearing officers. More specifically with respect to the Department of Workforce Development (DWD), there was a question of whether there are hearing officer performance problems due to DWD granting them too much latitude in working at home and in establishing their own work rules. We are pleased to see that you found little support for most of these concerns. Although we have not found that there are significant problems in these areas, we appreciate hearing this from an independent source.

As your report shows, DWD employs 57 hearing officers to handle significant caseloads for three important programs—Equal Rights, Unemployment Insurance and Worker's Compensation. We are proud to see that our hearing officers resolved over 29,000 cases during FY 1998-99. A prompt and fair resolution of the case is very important to the parties. One measure of our success as an agency is how promptly and fairly we resolve the cases we are responsible for. The great number of cases resolved certainly supports our view that our hearing officers are typically productive and hardworking.

Your report recommends that all agencies have appropriate performance standards for their hearing officers and that they periodically measure the extent to which hearing officers have met the standards. I fully agree with this recommendation. In DWD, we already have 29 standards relating to the hearing process and 17 relating to hearing officers. Your report notes that we do not measure all of the standards we have. In order to know whether we are meeting standards, it is, of course, necessary to have appropriate measures in place. I am directing each DWD division that employs hearing officers to develop ways to measure whether they are meeting all of their performance standards. The deadline for completing this work will be October 15, 2000.

The report also finds that hearing officers in the Worker's Compensation Division were not evaluated in 1999. We agree with this finding. It is DWD policy that each employee be evaluated at least once per year. We understand the importance and value of annual

evaluations. The hearing officer evaluations that have not yet been completed will be finished by July 1, 2000.

The report also makes four recommendations relating to the legal assistants in the Unemployment Insurance Division. Specifically, the report recommends that we do the following:

conduct annual employee evaluations; implement the required monthly productivity reports; review the telecommuting agreements when productivity standards are not met; and, increase existing productivity standards.

We agree with all of these recommendations concerning the legal assistants. We have taken or will take these actions in response to the recommendations.

- The current performance standards will be reviewed and revised by September 1, 2000.
- We have been regularly producing the monthly productivity reports since November 1999. In November, we assigned an employee the responsibility for producing the reports and expect no further problems with the production of those reports.
- We consider a legal assistant's ability to work at home to be a privilege and not a right. To continue working at home, the legal assistants will have to successfully meet the productivity and other standards for their positions. They are also expected to produce summaries of the hearing tapes that are of high quality. Review Attorneys for the Labor and Industry Review Commission (LIRC) complete periodic reviews of the quality of the summaries. The monthly productivity reports and the quality reviews will continue to be the major factors for determining if a legal assistant is performing satisfactorily on an ongoing basis.
- We have already completed the legal assistants' evaluations and brought them up to date. We will perform their annual evaluations in subsequent years. We will also institute a formal process to keep track of when each employee's evaluation is completed each year.

Finally, your report states that DWD's Division of Vocational Rehabilitation has a high cost per case for the cases it resolves through contracted hearing officers. You suggest that the Legislature may want to consider using DOA's Division of Hearings and Appeals as a possible way to lower the cost. Your report also notes the importance of having hearing officers with expertise with the issues in dispute. We support your objective to lower the costs of these hearings. We will, therefore, explore the options available to us to do so.

Thanks again for the opportunity to provide these comments. Please feel free to contact me if I can provide any additional information.

Sincerely,

Linda Stewart, Ph.D. Secretary